

# **REPORT ON THE OBSERVANCE OF STANDARDS AND CODES**

## **CORPORATE GOVERNANCE COUNTRY ASSESSMENT REPUBLIC OF THE PHILIPPINES**

**September 2001**

This Corporate Governance Assessment of the Philippines has been completed as part of the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC), which are designed to strengthen the international financial architecture. This ROSC is based upon a template structured around the OECD Principles of Corporate Governance completed by a consultant, and a team of specialists, based upon a review of relevant law and regulation, and interviews with leading agencies in the Philippines. These include the Department of Finance, Bangko Sentral ng Pilipinas, Institute of Corporate Directors of the Philippines, Capital Markets Development Council, the Philippines Stock Exchange, Securities and Exchange Commission, the Bankers' Association of the Philippines and a range of private sector groups. The assessment was conducted in the first half of 2001 by Dr. Cesar Saldana, in collaboration with the World Bank's East Asia and Pacific private sector development unit (EASPS) and the World Bank's central corporate governance unit, in the Private Sector Advisory Services department. This study was financed in part by the Asia-Europe Meeting (ASEM) Trust Fund 2.

**REPORT ON THE OBSERVANCE OF STANDARDS AND CODES**  
**Corporate Governance Assessment**  
**Republic of The Philippines**

**Contents**

**I. EXECUTIVE SUMMARY**

**II. DESCRIPTION OF PRACTICE**

**A Capital Market Overview**

- A1 Capital market structure
- A2 Ownership structure
- A3 Legal, regulatory framework and professional/best practice bodies
- A4 Registration and listing requirements

**B Shareholder Protections**

- B1 Shareholder rights
- B2 Shareholder meetings
- B3 Disclosures on corporate ownership
- B4 Market for corporate control
- B5 Insider trading and self-dealing
- B6 Equitable treatment and statutory remedies

**C The Role of Stakeholders in Corporate Governance**

- C1 Respect of legal rights
- C2 Disclosure requirements and mechanism for redress of stakeholders' rights
- C3 Performance-enhancing mechanisms for stakeholder participation

**D Financial and Non-Financial Disclosure**

- D1 Disclosure of material information
- D2 Domestic and international accounting standards
- D3 External audit
- D4 Professional institutions and audit/accounting standards
- D5 Public access to disclosure through regulators

**E The Governing Body**

- E1 Structure and legal duties
- E2 Nomination
- E3 Key functions
- E4 Director liability and disclosures relating to directors

**III. SUMMARY NOTE ON POLICY RECOMMENDATIONS**

- Table 1: Summary Fact Sheet
- Table 2: OECD Principles – Assessment Matrix
- Annex: Policy Recommendations based on the OECD Principles
- Appendices: Market Information on the Philippines

## I. EXECUTIVE SUMMARY

- 1.1 Corporate governance in the Philippines is characterized by concentrated ownership by a limited number of family shareholders, within a bank-dominated financial market. A comprehensive set of corporate law and capital market regulations are enforced by relatively weak institutions that are undergoing restructuring reforms.
- 1.2 As in many East Asian countries, the need to strengthen corporate governance was highlighted during the financial crisis in the region, and recent securities market scandals. There growing interest in corporate governance from both the public and private sector. Examples include the formation of a Presidential Commission on Governance, formation of an Institute for Corporate Directors, recent legal and regulatory reforms and capacity building programs. A joint public/private sector task force on corporate governance has been established with responsibility for developing a national strategy on corporate governance reform. The policy recommendations in this report have been discussed in detail with the leading groups involved with reform in the Philippines, where corporate governance is seen to have potential for promoting competitiveness and broadening access to capital.
- 1.3 This *Report on the Observance of Standards and Codes* (ROSC) benchmarks Philippine corporate governance against the OECD Principles of Corporate Governance, which have been recognized by the Financial Stability Forum as one of the core standards underpinning the international financial architecture. As such, the report focuses primarily on corporate governance issues affecting listed companies and equity providers. Recommendations on related corporate governance issues such as banking and the governance of group structures, though relevant to the reform dialogue, are beyond the scope of this report. Two parallel ROSCs are now being prepared to assess the Philippines on accounting and auditing, and insolvency and creditor rights, which will provide greater detail on these issues.
- 1.4 The policy recommendations in this ROSC are intended to highlight areas in which the Philippine corporate governance system could be strengthened. They are grouped under four main headings: improving the disclosure of non-financial information, strengthening the rights of (minority) shareholders, enhancing the role of the board of directors, and ensuring the independence of the audit.

## **DESCRIPTION OF PRACTICE**

### **A Capital Market Overview**

#### **A1 Capital market structure**

The Philippines has approximately 233,438 active stock corporations, of which 246 are publicly listed companies<sup>1</sup>. Listed companies had a total market capitalization of Pesos 2,577 billion (US \$50.9 billion) representing approximately 77.5% of GDP. The average market capitalization of publicly listed Philippine companies is Pesos 10.4 billion (US \$206 million).

The Philippines has one stock market, the Philippine Stock Exchange (PSE). Daily Value of trading was approximately Pesos 1.43 billion (US \$28 million) per day in 2000 and the turnover ratio for the year was 14%. There are 15 companies listed on foreign exchanges.<sup>2</sup> The market value of listed companies is concentrated in the 29 companies that compose the market index (Phisix). The top 10% and 25% of publicly listed companies accounted for 88.6% and 95.9% of market capitalization, and 81% and 96% of trading volume, respectively, at year end 2000. Companies in the index accounted for about 71% of total market capitalization, excluding two foreign insurance companies whose shares are very thinly traded.

On average the net new number of publicly listed companies grew by an average of five companies per year over the last five years. This includes the IPO 'boom' of 1996 when 13 companies floated. Few companies exit from the stock market due to the regulatory costs and weak enforcement of de-listing rules.

The largest and most liquid companies represent a number of different sectors: examples include, the telephone company (Philippine Long Distance Company), real estate and banking (Ayala Corporation), food and beverages (San Miguel Corporation), a bank (Metropolitan Bank) and a real estate management company (SM Prime Holdings).

#### **A2 Ownership structure**

The average free float for the Phisix companies is approximately 38%. Controlling shareholders (defined as the largest five shareholders) own up to 80% of the voting shares in seven out of the 29 companies that compose the Phisix. The publicly listed companies sector overall shows a similar degree of ownership concentration. On average, the largest single shareholder owns 41% of outstanding shares; the largest five shareholders own 65% and the top 20 shareholders own 76% of outstanding shares<sup>3</sup>. On average, publicly listed companies had 43,500 shareholders<sup>4</sup>. Recent equities financing patterns show a continuing concentration of corporate ownership.

---

<sup>1</sup> Unless stated otherwise, figures are from SEC for yearend December 2000. Significant changes in values have occurred since due to market volatility.

<sup>2</sup> Three on New York Stock Exchange, one on Nasdaq, three are on the Singapore Stock Exchange and seven on the Luxembourg Exchange.

<sup>3</sup> Results of the survey of publicly listed companies are from Saldana, C.G., "Corporate Governance Policy and Environment and Their Impact on Corporate Performance and Finance", RETA 5802, Asian Development Bank, Manila, October 1999.

<sup>4</sup> Saldana, 1998

Pyramid structures of company groups are common in the Philippine corporate sector. The apex company in these groups of companies is usually a pure holding company. These form the largest sector in the PSE, accounting for 20% of the market capitalization at year-end 2000. These pyramid corporate structures have proven vulnerable to weaknesses in the operating companies, particularly in light of imprudent financing and investment decisions by the apex. . During the Asian crisis, failure in a few companies (in many cases, engaged in real estate and financed by foreign currency debts) weakened, and eventually caused the collapse of some pyramids.

There is limited availability of external financing<sup>5</sup>, plus borrowing and transaction costs are high. This has increased the incentives of the corporate sector to operate internal capital markets via ownership of a bank, which then provides financing for the group.

To avoid problems of connected credits, the central bank (Bangko Sentral ng Pilipinas or BSP) regulates banks through rules on lending to directors, officers, stockholders and those with related interests (DOSRI). Companies borrow from group member banks until they reach DOSRI limits, now about 25 percent of the capital of the lending bank..

Equity financing through new issues amounted to 22% of capital formation, defined as growth in fixed assets, for the period 1996-1999. In the last 5 years, publicly listed companies raised a total of P190 billion (US \$3.8 billion) of equity funds, mostly through rights issues (P88 billion or US \$1.7 billion) and private placements (P62 billion or US \$1.2 billion).

The leading domestic institutional investors in the Philippines are the pension funds of private sector employees (Social Security System), government employees (Government Service Insurance System or GSIS), and the armed forces (Armed Forces of the Philippines Retirement Service and Benefit System). Minority shareholders are not currently organized or represented by a separate organization. The two largest institutional investors (Social Security System and Government Service Insurance System, or GSIS ) have combined assets of P340 billion (US \$6.7 billion) of which P264 billion (US \$5.2 billion) are investments in securities, including equities. Prior to 1998, investments in equities were small, in the case of GSIS totaling less than 2% of its portfolio. While there has been a very substantial growth in investments for both pension funds, their respective Charters limit investments in equities. Foreign equity has not played an important role, in part because board membership of investment companies and funds is restricted to Philippine nationals.

The net result of these factors is that the domestic investment industry has not been an important investor in equity. There are current efforts to review and amend the Investment Company Act to liberalize the mutual fund and investment funds industry.

### **A3 Legal and regulatory framework and professional/best practice bodies**

The Philippine framework governing corporations and securities has common law origins. Two pieces of legislation principally govern corporate activities - the Corporation Code and the Securities Regulation Code (SRC) .

---

<sup>5</sup> Successful IPOs during the mid 1990s raised funds largely from foreign sources.

The Corporation Code is the general law on private corporations. It sets out provisions governing: incorporation; the powers and liabilities of directors, officers and stockholders; the conditions under which foreign corporations may transact business in the Philippines; rules on corporate mergers and reorganizations; and penalties for violation. The SRC is the principal law on securities, and governs the rules and regulations of the PSE. Cases of violation of disclosure and insider trading rules,<sup>6</sup> generated a groundswell of support for reforms from market players and the public that led to the passage of the SRC in August 2000.

The Securities and Exchange Commission (SEC) administers both the Corporation Code and SRC and has supervisory responsibilities for all corporations, including unlisted companies. It is the primary regulator of the capital market with powers to: supervise and regulate the exchanges, regulate securities transactions under the principle of full disclosure, license stockbrokers, dealers and sale of securities; and promulgate rules and regulations on securities trading.

The SEC is governed by a collegial body comprising a chairperson and four commissioners, appointed by the President of the Philippines for a seven year term. The SEC is under the administrative supervision of the Department of Finance. Congress finances the SEC under an annual budget appropriation. SRC may retain unutilized funds up to 1m Pesos, which provides a degree of fiscal autonomy.

The PSE supervises and regulates the stock market. It is a self-regulatory corporate organization that independently finances its operations through capital from members (“seats” in PSE) and fees collected for listing and continuing membership. Its Compliance and Surveillance Group conducts legal audit and monitoring of member-brokers, and is responsible for monitoring the daily automated trading activity. The Automated Trading Group handles the operation of the automated trading, and clearing and settlement activities for stock operations. PSE is in full compliance with G30 and ISSA settlement guidelines.

The board of governors is headed by a Chairman and composed of seven active broker-members and eight non-members manage PSE. The President of the Exchange is appointed from among the non-member directors of the Exchange. The members of the Exchange elect the Board for a term of one year. The SRC mandated an increase in the number of outside directors to address this. The PSE is required under the SRC to de-mutualize by August 2001.

The SRC has increased the administrative and criminal penalties for violations of the law. Penalties for violations of SRC includes a fine that ranges from P50,000 (US \$988) to P5,000,000 (US \$98,814) or imprisonment of between 7 to 21 years or both. In the old Revised Securities Act fines ranged between P200 (US \$3.95) to P50,000 (US \$988) and an additional amount of at most P500 (US \$9.88) per day of continuing violation.

In addition to recent legislative reforms such as the SRC and new banking regulations, a number of initiatives have been launched to promote corporate governance reforms and promote best practice in the Philippines. These include the Institute of Corporate Directors (ICD), the Capital

---

<sup>6</sup> A notable case involved BW Resources Corporation, a gaming and real estate company whose key shareholder, Dante Tan, and a number of stockbrokers were charged by the SEC before the Department of Justice, of stock price manipulation in 1999. The case is still unresolved. Source: *Business World, editions 1999*.

Markets Development Council (CMDC) and a recently announced Presidential Commission on Governance.

Among these the ICD programs include directors' training, policy advocacy, and international networking. It has developed training packages for directors of various types of corporate entities that discuss improvement in corporate governance systems. It is developing various materials such as "Guidelines for Board of Directors, Code of Ethics and Code of Best Practice".

#### **A4 Registration and listing requirements**

SRC requires a corporation that is offering to sell its securities to the public (defined as at least 20 investors) to register the securities and to get approval from the SEC. Approximately 100,000 companies are registered. A corporation applies for registration of its securities by submitting to the SEC a Registration Statement with a Prospectus. The Registration Statement includes a description of the business of the company, a list of directors and key officers, financial statements of the corporation, disclosures on compensation of directors and management discussion of performance and results of operations, among other requirements. SEC's approval is based on the full-disclosure approach..

A copy of the Registration Statement and Prospectus must be submitted to the PSE together with an application for listing. The PSE imposes several minimum standards of capital, number of shares to be offered to the public, number of directors and shareholders after listing, and three years profitable operation, according to the standards set in its three-board system. The minimum paid-up capital is P100 million (US\$2 million) for corporations that want to list in the first board, P25 million (US \$494,071) for the second board and P5 million (US \$98,814) for the Small and Medium Sized Enterprises (SME) board.<sup>7</sup> The minimum public offering is based on a graduated percentage of estimated market capitalization of the corporation after listing. When the estimated market capitalization does not exceed P400 million (US \$7.9 million), the required percentage for public offering is 33 percent of estimated market capitalization after listing or P50 million (\$US 988,142) whichever is higher. The lowest minimum percentage of public issue is ten percent of estimated market capitalization or P1 billion (US \$19.76 million), whichever is higher, when the issuer's estimated capitalization is over P10 billion (US \$197 million).

For the SME board, the minimum offering to the public is 20 percent of the authorized capital stock but the existing owners are required to retain at least 51 percent of the outstanding capital stock during the first year of being listed. Corporations applying for listing in the first board must have a minimum pre-tax profit of P10 million (US \$197,628) per year for three years and a total pre-tax profit of P50 million (US \$988,142) for the three years. In the second board, corporations must have earned a pre-tax profit equal to 15 percent return on equity for at least three years prior to application for listing. Corporations in the SME board are required to generate a positive net operating cash flow for two years and have a debt-equity ratio that does not exceed the standard set by PSE.

PSE listing requirements include a "lock-up" period for large shareholders, which prohibits trading. This measure intended to protect minority shareholders. The "lock-up" period depends on the board listing. In the first board, shareholders that own at least 10 percent of the

---

<sup>7</sup> The first, second and SME board system has been implemented by PSE only for newly listed companies. Only four companies have been classified in the second board and none in the first board and SME board.

outstanding capital before the IPO are prohibited from trading their shares over a period of 180 days after the listing. In the second board, the trading prohibition applies to all shareholders before the IPO for a minimum period of 365 days after the listing. One-third of the locked shares may be traded in the second year of the listing, another one-third in the third year and the final one-third in the fourth year. In the SME board, all shareholders before the IPO are prohibited from trading the shares of the listed corporation for a period of 180 days.

Listing and trading can only be undertaken after the applicant company has registered and lodged its securities for IPO in the Philippine Central Depository (PCD) which was set up in 1995. PCD's principal shareholders are: Philippine Stock Exchange (31.7%), Bankers Association of the Philippines (31.7%), Financial Executives' Institute of the Philippines (19%), Development Bank of the Philippines (10%), Investment House Association of the Philippines (6.6%), Social Security System (5%) and Citibank N.A. (5%).

## **B Shareholder Protections**

### **B1 Shareholder Rights**

The Corporation Code guarantees shareholders the right to: elect, remove and replace directors; vote on certain corporate acts; subscribe to the capital stock of the corporation; obtain information about the company; receive returns on its investment; appoint auditors and dissent on certain decisions of the board. The Articles of Incorporation lay down the specific rights and powers of shareholders with respect to the particular shares they hold, all of which are protected by law so long as they are not in conflict with the Corporation Code.

The Articles of Incorporation may divide the shares of stock of the corporation into classes and provide different rights, privileges and restrictions to each class of shares. The most common classes are common and preferred shares. The Code allows the issuance of non-voting shares so long as the company has another class of shares with complete voting rights. Other types of shares allowed under the Code are redeemable shares, founders' shares and treasury shares. The convertibility feature of shares must be specifically stated in the articles of incorporation to be valid. The Code requires SEC approval for the issuance of founder's shares, which are not common. Share buy-backs are allowed under guidelines on sufficient retained earnings and in acquisition of shares from shareholders who exercise their appraisal rights.

The Code mandates the use of cumulative voting in the election of directors. Although directors may be removed with or without cause, the Code prohibits removal without cause if it will deny minority shareholders representation in the board. Removal of directors requires an affirmative vote by two-thirds of the outstanding capital.

The Code grants preferred shareholders or holders of non-voting shares the right to vote and requires a majority vote of 2/3 of outstanding voting and nonvoting shares on the following: amendment of the articles of incorporation; adoption and amendment of by-laws; disposal of all or substantially all of the corporate assets; incurring bonded indebtedness; distribution of stock dividends, increasing or decreasing capital stock; merger or consolidation of the corporation with another; investment of corporate funds in another corporation or business; and the dissolution of the corporation. Generally, only common shares are voting shares.

All stockholders have pre-emptive rights, unless there is a specific denial of this right in the articles of incorporation as in the case of public companies, which is not common. The PSE may require a public company to submit certification that all stockholders have waived their pre-emptive rights prior to a public offering. Issuance of new shares out of the authorized capital needs the approval of the board of directors while changing the authorized capital stock requires the vote of at least two-thirds of the outstanding voting and non-voting capital stock..

The Corporation Code mandates the company to allow shareholders to inspect corporate books including minutes of board meetings and stock registries, and to provide them an annual report including financial statements without costs or restrictions. In addition, in the case of listed companies, the SRC requires that shareholders be provided with periodic reports to disclose personal and professional information about the directors and officers and certain other matters such as their holdings of the company's shares, dealings with the company, relationships among directors and keys officers, and the aggregate compensation of directors and officers. The Information Statement and Proxy Statement where these are found must be distributed to the shareholders before annual general meetings and in the Registration Statement and Prospectus in the case of registration of shares for public offering with the SEC.

Shareholders have the right to receive dividends subject to the discretion of the board. However, the SEC may direct the corporation to declare dividends when its retained earnings exceed its shareholders equity. In the Corporation Code, cash or property dividends [what is a property dividend?] only require the approval of the board, although, as a matter of policy the SEC requires stockholder approval for property dividends that are paid in terms of marketable securities. A shareholder has the right to dissent and demand payment of the fair value of his/her shares (appraisal right).

The Corporation Code allows the exercise of the shareholders' appraisal rights when there are major changes in the company that have been adopted, including: a) an amendment to the articles of incorporation which changed or restricted his/her rights as a holder of a class of shares, or authorized preferences that are superior to those of the outstanding shares of any class; c) the term of corporate existence is extended or shortened; c) all or substantially all of the corporate assets will be disposed; d) the company will merge or consolidate with another company; and e) corporate funds will be invested in another corporation or business. The SEC reports very few cases of shareholders that exercise their appraisal rights.

## **B2 Shareholders' meetings**

The Corporation Code requires corporations to hold annual meetings of shareholders. Basic requirements include the sending of written notices (at least 15 days before the meeting) to all stockholders and holding of the meeting in the city or municipality where the principal office of the corporation is located. The Corporation Code authorizes any shareholder or group of shareholders to petition the SEC to call a special meeting of the shareholders. The petitioning shareholders are responsible for preparing and distributing the agenda for the special meeting. In general, a voting shareholder may introduce a resolution or counter proposal during the meeting under "Other Matters" provided these do not require prior board approval.. A majority of the outstanding capital stock present in person or by proxy constitutes a quorum. The corporation follows voting procedures that are provided in the by-laws of the company.

Listed companies must distribute an SEC prescribed Information Statement or Proxy Statement to shareholders before the shareholders' meeting. Both statements contain the date, time and place of the meeting to be held, the matters to be decided during the meeting, the voting procedures and the names and qualifications of the company's principal shareholders, directors and officers. During an annual meeting, the SRC requires the listed company to also distribute with the Information Statement or Proxy Statement an annual report that includes audited financial statements. Only shareholders of record as of the date set by the board or by-laws may vote during the shareholder meetings. Shareholders may vote in person or by proxy. A proxy does not require notarization and is generally valid only for the intended meeting. Shareholders may also create voting trusts and confer on the trustee the right to vote and other rights pertaining to the shares for a period not exceeding five years. Proxy voting by mail is not permitted.

### **B3 Disclosures on corporate ownership**

SRC requires all corporations to file a General Information Sheet (GIS) with the SEC within thirty days after the holding of its annual stockholders' meeting. The names and shareholdings of the top twenty shareholders at the level of the nominee holding must be set out. The SEC and the PSE have ownership disclosure requirements for listed companies. Principal shareholders, officers and directors must report their individual shareholdings and beneficial ownership of shares to the SEC every month. The stock transfer agent of each listed company must submit a complete list of stockholders after the record date to be used for calling meetings and a list of the top shareholders to SEC monthly and to PSE quarterly. Neither the SEC and PSE require disclosure of the ultimate owners of shares. If shares are to be lodged with the Philippine Central Depository, PSE only requires disclosure of the names of the brokers holding the shares. Shareholders may obtain information about the ownership of the company from the company's stock and transfer book. However this information is confined to the names listed in the register – they do not have the power to ask the corporation to reveal beneficial ownership. Shareholders are also entitled to a copy of the GIS from the SEC.

### **B4 Market for corporate control**

The Philippines has both disclosure requirements and tender offer rules in relation to changes in corporate control. SRC requires immediate disclosure by a public company of any change in control and the details of the transactions resulting in the change within 15 days to SEC and within ten minutes by fax or telephone followed by written confirmation within 2 hours to PSE. Anyone who acquires more than five percent of any class of equity securities of a public company must disclose to SEC the transactions relating to the acquisition and his intention to acquire control of the company. Holders of more than ten percent of any class of equity security are required to file with the SEC and the PSE a statement of their shareholdings initially within ten days after becoming beneficial owners of the shares and monthly thereafter. They must also report subsequent changes in shares that they own.

SRC has issued rules on mandatory tender offers. These apply to the following: (a) anyone who intends to acquire at least 15 percent of a listed company's shares according to an agreement between the party and a seller or sellers of the shares; (b) or at least 30 percent of the equity over a period of one year, (c) or at least 50 percent of the equity shares of a public company. The tender offer must be made to all stockholders by making a declaration at SEC and then

publishing the offer in two newspapers of general circulation in the Philippines on the date of the start of the tender offer and for 2 consecutive days thereafter. SRC requires the buyer to make a tender offer for the total number of shares that he/she intends to acquire.

## **B5 Self-dealing and Insider Trading**

The Corporation Code requires that contracts for self dealing be “fair and reasonable” and approved by a majority of the board in a meeting, where the director concerned is neither needed for a quorum nor for approval . Self-dealing contracts may alternatively be ratified by a two-thirds vote of the outstanding capital stock of the corporation. Publicly listed companies must disclose in the notes to financial statements any related party transactions involving the company and any of its subsidiaries in which a director, executive officer or stockholder owns at least 10% of the total outstanding shares, and the members of their immediate family had a material interest.

Insider trading is subject to civil, criminal and administrative sanctions. The SRC considers insiders as those who possess material information not generally available to the public, which a reasonable investor would consider important in determining whether to buy, sell or hold securities. SEC is responsible for enforcing insider-trading rules. There has been no prosecution for insider trading in the last five years and only one brought before the courts.<sup>8</sup>

## **B6 Equitable treatment and statutory remedies**

Shareholders may bring individual, class or derivative suits for wrongful or fraudulent acts of directors. However, there are substantial costs and delays in the prosecution of cases. Disputes among shareholders or the shareholders and the corporation, are the responsibility of the Regional Trial Courts (RTC), having formerly been dealt with under the SEC. The RTC also deals with cases involving fraud and misrepresentation by directors or officers that are detrimental to the public; controversies in the election and appointment of directors and officers; and petitions of corporations to be declared in a state of suspension of payments.

## **C The Role of Stakeholders in Corporate Governance**

### **C1 Respect of legal rights**

Philippine law sets out the duties of the corporation and/or its directors to creditors and employees. With respect to employees, the corporation, including its directors, is obliged to respect the security of tenure of employees, provide humane conditions of work and pay, under the Labor Code. Creditor rights are set out under the Insolvency Law. In cases of bankruptcy, directors of the corporation are also mandated to preserve the assets of the corporation to answer for the claims of creditors, including employees for their unpaid wages. Claims of labor for unpaid wages and monetary claims are given preference over the claims of other creditors with respect to the assets of the corporation. Stakeholders have access to corporate information of public record or that have been disclosed. Some large companies publish company newsletters as a vehicle for informing their employees and other interested parties about the company’s program and plans.

---

<sup>8</sup> The BW case cited above.

## **C2 Disclosure requirements and mechanism for redress of stakeholders' rights**

In the case of public corporations, relations with stakeholders may be subject to disclosure under the SRC regulation, which requires that any material fact or event which would reasonably be expected to affect investors' decisions about their investment in the company must be reported to SEC, for example, strikes by the employees, or lock-outs by the employer. Stakeholders who suffer loss or injury as a result of any act of the corporation can sue for damages in accordance with Philippine civil laws. Employees can seek redress in the National Labor Relations Commission for any violation of their rights arising from an employer-employee relationship or in the regular courts, for any other civil or criminal action against the corporation. Employees may also seek redress in accordance with the grievance machinery provided in a collective bargaining agreement between the management and employees of a corporation.

## **C3 Performance-enhancing mechanisms for stakeholder participation**

The adoption of voluntary codes of practice on relations with stakeholders is left to the discretion of the board of directors. The corporate mission of some Philippine companies includes commitment to the welfare of stakeholders along the lines of social justice, good corporate citizenship, social responsibility, or environmental concern. A number of large companies have formed foundations to serve as their respective implementing arms for addressing the needs and concerns of specific stakeholder. The activities of these foundations include socio-civic programs, educational scholarships and community development programs. Employees may also enjoy special rights to participate in the company's profits through the grant of bonuses or ownership of the company by way of stock option or purchase plans. However, these privileges are not mandatory and are left to the discretion of the company.

## **D Financial and Non-financial Disclosure**

### **D1 Disclosure of material information**

The Corporation Code requires all corporations to provide shareholders with reports of operations including financial statements. The annual report contains a brief discussion of the business, the consolidated audited financial statements of the company and its subsidiaries, management's discussion of operations, the identity and background of the directors and principal officers, market price and dividends of the stock and information, and any disagreements with accountants on accounting and financial disclosure. The SRC requires this to be distributed ahead of or together with the Information Statement or Proxy Statement, which must be sent to shareholders at least 15 business days before the shareholders' meeting. Corporations issuing shares to the public are required by the SRC to state in the subscription agreement that subscribers may, on request, receive a copy of the prospectus containing the financial statement of the company offering the shares. Corporations must disclose the aggregate remuneration of the board members. There is no requirement for companies to disclose its policies on risk management, including internal control and going concern. Listed companies making a public offer of shares are required to discuss risk factors in the Registration Statement.

The 1999 Annual Report of SEC states that its Securities Investigation and Clearing Department completed 39 investigations in 1999 and 31 cases in 1998 involving accounting/inspection of corporate books, records/financial statements. For 1999, its Prosecution and Enforcement Department filed criminal charges before the Prosecutor's Office involving a complaint filed by a stockholder regarding a refusal to provide a copy of the financial statements of the corporation

## **D2 Domestic and international accounting standards**

The Accounting Standards Council (ASC) sets the accounting standards and rules that form the Philippines body of generally accepted accounting principles (GAAP), with 18 out of 37 International Accounting Standards adopted to date. The parallel ROSC on audit and accounting provides detailed analysis of current practice and recommendations for building capacity in the profession and regulatory framework.

## **D3 External audit**

The Corporation Code and the SRC require all corporations to file their audited financial statements at SEC every year. SEC and PSE require publicly listed companies to submit more extensive reports under their prescribed format. SEC may impose sanctions which include warnings, fines, suspension of the trading for up to six months, and ultimately, delisting. SRC requires companies to maintain a system of internal accounting controls to provide assurance that corporate transactions are authorized by management, financial statements are prepared in accordance with the Philippine's generally accepted accounting procedures (GAAP) and figures are reconciled with actual asset values. Instead of setting audit standards, the profession relies on requirements on Chartered Public Accountant (CPA) to observe standards of due diligence as stated in the Code of Ethics for CPAs. Parties adversely affected by improperly audited financial reports can proceed against auditors for committing "acts discreditable to the profession" by bringing a complaint before the Board of Accountancy (BoA).

## **D4 Professional institutions and audit/accounting standards**

The BoA, as the regulator of the profession, defines and sets guidelines regarding independence of auditors. It defines independence as "a state of mind, a manifestation of the professional integrity of the individual" and requires a CPA to evaluate, before expressing his/her opinion on the financial statements, whether, under the circumstances this will be considered independent and unbiased by one who knows the facts. The BoA Code of Ethics requires a CPA employed by a public accounting firm to be independent with respect to an enterprise whose financial statements on which the auditor will be expressing an opinion on.

The Code of Ethics requires CPAs to observe a standard of independence in relation to the company, involvement in management services of the auditor and rotation of audit partners in-charge of the audit, among others, to comply with audit standards promulgated by the BoA, to inhibit themselves from giving an opinion on forecasts by management and to "desist from encroaching into the practices of other CPAs. "

The BoA is empowered to process administrative complaints filed a party, by the Board. Grounds for an administrative complaint against a CPA for violation of the law due to gross negligence, issuing an auditor's certificate without observing the necessary audit standards, and acting as a dummy for an unqualified accountant.

The Board of Accounting (BoA) prescribes the requirements for admission to the Certified Public Accountants (CPAs) examinations and oversees the examination on behalf of the Professional Regulatory Commission (PRC). The BoA is also empowered to investigate, on its own or upon complaint filed by a private party, and decide cases involving violation of the Accountancy Law. It has the corresponding power to suspend, revoke or reissue certificates of registration of CPAs. SEC has announced an "amnesty" whereby companies in default of their

reporting requirements paid a flat penalty, to which significant number of companies responded, indicating the poor level of current compliance.

## **D5 Public access to disclosure through regulators**

Under the SRC, companies must lodge financial statements that have been audited by an independent auditor with the SEC. Financial statements must be prepared in comparative form and must include a consolidated balance sheet, a consolidated statement of income and cash flows, financial statements of businesses acquired or to be acquired, and separate financial statements of subsidiaries not consolidated by the company. Financial statements submitted to SEC must carry a statement of management's responsibility wherein management acknowledges responsibility for all information and representations contained in the financial statements. At the time of first filing, a Statement of Representation prepared by a CPA, must be part of all financial statements presented to the SEC. The SEC and the PSE act as central registries for financial and non-financial corporate information. All such information and reports are accessible to shareholders, investors, creditors and other interested parties.

## **E The Governing Body**

### **E1 Structure and legal duties**

The Philippine Corporation Code provides for a unitary Board of Directors composed of at least five but not more than fifteen members elected by shareholders. The Board is authorized to exercise all the corporate powers of the corporation, conduct the corporate business, and control and hold the properties of the corporation subject to limitations provided by law. Thus, the Board may exercise its powers and authority without need to consult or obtain the consent of shareholders except on matters where the law explicitly requires their approval (see above).

The Board owes fiduciary responsibility to the corporation and to all shareholders in general. The Code authorizes the Board to create an executive committee to which it can delegate certain functions normally performed by the entire Board. Composed of at least three members of the Board, the executive committee can act on matters delegated to it by the Board or by the by-laws, except with respect to actions that require shareholders' approval, filling up of vacancies in the Board, amendment or adoption of new by-laws, and distribution of cash dividends. Except for the executive committee, the Corporation Code does not have any other provision regarding Board committees although the corporate by-laws may provide for the creation of other Board committees. A number of publicly listed corporations have an audit and/or nomination committees.

The Code does not mandate the composition of the Board except for the requirement of independent directors for publicly listed companies and of banks. Recent legislation requires the appointment of independent directors to emphasize that the Board should serve all shareholders rather than the controlling shareholders. The SRC of 2000 requires publicly listed companies,

and the General Banking Law of 2000 similarly requires banks, to have at least two independent directors in their Boards. These laws define an independent director as a person who is not an officer or employee of the corporation or bank, its parent or subsidiaries, or of any individual having a relationship with the corporation or bank that would interfere with the exercise of his/her independent judgment in carrying out their responsibilities as a director. There are no specific disclosures required for independent directors. Since the requirement for independent

directors will be implemented only starting 2001, there is no basis for assessing whether the disclosure are adequate for monitoring their independence.

Cumulative voting is mandated in the Philippines and the Code prohibits the removal, without cause, of a director elected by minority shareholders if that action will deprive them of representation in the Board. The Philippine Constitution and some special laws limit the number of foreign directors of corporations in fully nationalized industries like mass media and educational institutions. In partially nationalized industries such as mining, utilities and banks, foreigners can sit in the Board in proportion to their shareholdings. A majority of the directors of all corporations must be residents of the Philippines.

Corporations must appoint at least three corporate officers: a president, corporate secretary and treasurer. The Code does not require the appointment of an internal auditor. PSE mandates a minimum number of directors and shareholders for the newly-listed companies, namely, 7 directors and 1,000 shareholders for companies in the first board, 7 directors and 500 shareholders in the second board and 5 directors and 50 shareholders in the SME board.

The SRC requires that publicly listed companies appoint two independent directors, is they have assets of more than P50 million or US \$1 million, at least 200 shareholders each owning at least 100 shares of a class of equity.

The Board of directors is required to convene at least once a month unless the by-laws specify a different schedule. In most corporations, the by-laws specify that the Board meet quarterly. Directors do not have to disclose their attendance at Board meetings to shareholders or to any external agency. A director, upon approval of the Board may seek professional advice in the performance of his/her duties at the expense of the corporation. A director has a legal right to obtain information by demanding inspection of the books and records of all business transactions and the minutes of Board meetings. The right to inspect the books and Board minutes may be denied if the Board deems the request to be not in good faith or without a legitimate purpose:

Directors do not receive compensation beyond a per diem for Board meetings except if the compensation is either specifically provided in the corporate by-laws or passed in a resolution by a majority vote of shareholders. In the latter case, the total compensation must be within the maximum of ten percent of the previous year's corporate net income before tax..

## **E2 Nomination**

The Corporation Code has the following requirements for nomination: one share of the capital stock of the corporation<sup>9</sup>; no conviction punishable by imprisonment for more than six years; no violation of the Corporation Code committed within the last five years<sup>10</sup>. Additional qualifications may be provided in the by-laws of the company so long as such requirements are "reasonable" and do not deprive minority shareholders of representation in the Board. The General Banking Law authorizes the Monetary Board to prescribe, pass upon and review the qualifications of individuals elected as bank directors.

SRC requires disclosure of background, experience and family affiliations with officers by

---

<sup>9</sup> This means that a director who is a nominee of a corporate shareholder must still own at least one share registered in his/her own name.

nominated directors in the Proxy Statement or Information Statement provided to shareholders prior to the meeting. To improve the opportunity for minority shareholders to elect a director who will protect their interest, the Code mandates cumulative voting in which a stockholder can give one candidate as many votes as the number of directors to be elected multiplied by the total number of shares that he/she holds

A director holds office for a term of one year until the next shareholder's meeting. Shareholders may petition the SEC to compel the corporate officers to call a shareholders' meeting to elect a new set of directors. Any director may be removed from office by a minimum of two-thirds vote of the outstanding voting capital stock of the corporation. There are no restrictions on the number of directorships that an individual may hold subject to disclosures of their holdings. There are laws and regulations against certain types of interlocking directorships. The Insurance Code prohibits a director of an insurance company to be concurrently a director of an insurance adjustment company. The Manual of Regulations for Banks prohibit concurrent directorship in banks or between a bank and a non-bank financial intermediary but allows concurrent directorship in a bank and one or more of its subsidiary financial institutions other than an investment house.

### **E3 Key functions**

The responsibilities of the Board derive from the Corporation Code, SRC and the General Banking Law of 2000 in the case of banks, articles of incorporation and by-laws of the corporation.<sup>11</sup> These provide the board with control over management by virtue of its authority to: select, appoint and remove corporate officers, determine executive compensation, set strategic directions and policies, delegate authority to management. There are no generally established criteria and procedures for selection of officers and setting of their compensation. Family-owned corporations elect their Boards and appoint their top management to help ensure succession within the family members. The Board is responsible for submission of the annual report to the stockholders. The chief executive officer and chief financial officer are responsible for the quality of the financial statements contained in the annual report, as evidenced by the Statement of Management Responsibility that they jointly sign. The role of the Board is to review the financial statements before approving and submitting them to shareholders<sup>12</sup>

### **E4 Director liability and disclosures relating to directors**

The Corporation Code holds a director liable for damages if he/she performs specific acts that violate his/her fiduciary duties, such as voting for patently unlawful acts of the corporation, negligently directing the affairs of the corporation, acquiring personal interest that conflict with his/her duty as a director. These violations constitute a ground for removal of the director for cause and for action to collect indemnity. Publicly listed companies are subject to SRC rules on insider trading and other manipulative securities trading practices, and filing of false statements. Thus the Code and SRC regulate unlawful acts, disloyalty, gross negligence and securities trading involving directors but do not set legal and regulatory standards of performance for directors.

---

<sup>11</sup> A 1999 ADB Survey of listed companies found that respondents considered the most important responsibilities of the Board in practice are to "make strategic decisions", "protecting shareholders' interest" and "appointment and compensation of senior management

<sup>12</sup> SRC Rule 68.2(a)

### **III. SUMMARY NOTE ON POLICY RECOMMENDATIONS**

Based upon this ROSC which benchmarks the Philippines against the OECD Principles of Corporate Governance following policy recommendations focus upon strengthening four elements of the Philippine corporate governance system:

- Disclosure of non-financial information
- The rights of (minority) shareholders
- The role of the board of directors
- The independence of the audit

In addition, throughout the corporate governance regime in the Philippines, enforcement requires strengthening. A number of these, including enhanced sanctioning powers and building additional capacity of the SEC and the PSE, are being addressed in collaboration with the Asian Development Bank.

#### **Disclosure of non-financial information**

- Ensure a mechanism for both the regulators and shareholders to identify the component parts of the capital structure and the beneficial ownership of holdings in excess of an agreed margin (five percent)
- To promote improved transparency, make the register of beneficial owners publicly available, via internet and for one site inspection by the SEC

#### **The rights of (minority) shareholders**

- Empower minority shareholders to play a more effective role in corporate governance by introducing a provision to allow shareholders to convene directly a meeting of the company, without having to petition the regulator, and for the company to circulate the agenda<sup>13</sup>
- Introduce a provision to allow shareholders to put forward proposals to the agenda, or counterproposals to management agendas and ensure these are practical for minority shareholders regarding cost, timetable and information.
- Review provisions governing duties of the majority in relation to the minority, and consider limiting voting rights on matters where the majority has a conflict of interest
- Review the minimum free float for listed companies, ensuring it corresponds with the special voting protections for minority shareholders (such as the qualified majority provisions of two-thirds, which would only be effective with a greater than one third holding by minorities)

---

<sup>13</sup> It appears that cumulative voting has not been able to effectively protect the minority shareholders as its effectiveness ultimately rests on the number of shares that the minority shareholders can actually cumulate and the number of seats in the board of directors available. Based on experience with several listed corporations, considering the concentrated ownership of shares in these companies and/or their ability to solicit sufficient proxy votes, the controlling shareholders are able to elect into the board the entire slate of management nominees to the board. In this way, cumulative voting works for the controlling shareholders and against the minority shareholders.

- Consider introducing a provision for voting by mail.
- Consider the establishment of an association or institution to protect the interests of minority shareholders, which could provide independent advice, research and voting services.
- Consider the introduction of a requirement for fiduciary investors, such as pension funds, to disclose their policies on corporate governance, to exercise their voting rights in the sole interests of the beneficiaries.

### **The role of the board of directors**

- Strengthen the mechanisms by which the board of directors govern the affairs of the company as mandated by law.
- Strengthen provisions governing self-dealing and conflicts of interest for directors
- Review disclosure provisions for directors to ensure they allow shareholders to fully assess independence to include all relevant information, particularly in relation to previous corporate directorships .
- Require disclosure of board practices on corporate governance benchmarked against a Philippine code of best practice which reflects international norms (including the establishment of independent audit committees, statements on internal control and going concern, disclosure of attendance at board meetings, nomination and review of performance, and stakeholder relations).
- Consider the introduction of training requirements for directors, and continuing professional education, with disclosure of training undertaken, particularly to ensure a full understanding of legal duties and liabilities.
- Introduce a requirement for directors to review and sign off on the auditor's long form report.

### **The independence of the audit**

- Require disclosure of all personal or business relationships, past or current, between the audit firm, its partners, the company, its directors and all related parties
- Require disclosure of full audit and non-audit fees paid to the audit firm by the company and its related parties
- Review general provisions regarding independence, including rotation of audit partner or firms
- Require the establishment of audit committees composed of a majority of independent directors, with responsibility for both internal and external audit
- Require training for members of audit committees to ensure financial numeracy.

For a full discussion of policy recommendations as they relate to specific OECD Principles, please refer to the Annex.

**Table 1: Summary Fact Sheet**

<b>Market and Regulatory Overview</b>	<b>I.</b>	<b>IV. Remarks</b>
Market Cap (percent of GDP) Turnover Ratio Number of Listed Companies Legal System (Origin) Autonomy of Capital Markets Regulator Powers of the Capital Markets Regulator  Stock Exchange Governance Corporate Ownership Structure		Pesos 2,577 billion (US \$50.9 billion) or 77.5% of GDP 14% in 2000 246 listed companies Corporate/securities law is common law in origin (US) Own charter, administratively under Dept. of Finance To supervise/regulate exchanges, regulate transactions, license brokers/dealers, promulgate rules/regulations on trading, impose sanctions for violations of the SRC SRO composed of member brokers Highly concentrated ownership, avg. free float 38%
<b>Shareholders' Rights</b> Voting Rights Proxy Voting Cumulative Vote/Proportional Representation Ownership percent required to call Shareholder Meeting Redress against Violations/ Minority Oppression Remedies Take-over Code Mandatory Tender Offer in Change of Control Insider Trading & Self-Dealing Prohibition Preemptive Rights	Yes Yes Yes Yes Yes Yes Yes Yes	One share one vote except with non-voting shares Permitted, notarization may be required under by-laws Cumulative voting is allowed Can be requested by any shareholder by petition to SEC, a meeting to remove a director requires a majority vote Individual, class action or derivative suits permitted, filed at SEC or regular courts depending on violation. Required for all shares purchased when 15% (30% in a year) of shares in the company are acquired Penalties are civil, criminal, or administrative sanctions This right can be denied by company by-laws
<b>Oversight of Management</b> Board Structure Independent Directors Committee Practices	Yes No	Unitary, power can be delegated to executive committee 2 independent directors required at co. with over 200 shareholders or 20% of board (whichever is less) Set by company by-law and at discretion of board
<b>Disclosure and Transparency</b> External Auditors Consolidated Statements Segment Reporting Disclosure of Price Sensitive Information Accounting – Standards and Enforcement Company Officers related Disclosures Related Party Transactions Disclosure of Ownership Risk Management and other Disclosures	Yes Yes Yes Yes No Yes Yes Yes No	Not provided by law but common in company by-law SRC requires annual submission by parent company Required three time a year Material information must be disclosed, rumors clarified Originally based on US GAAP, shifting now to IAS Pay must be disclosed for top 5 officers and directors Company must disclose any transaction relating to a director, officer, shareholder (10% or more) for 2 yrs. Beneficial owners of over 5% must file, co. lists top 20 Prospectus includes statement on risk factors

## Table 2: OECD Principles Matrix

The assessment that follows is based upon the OECD Principles of Corporate Governance (available at: <http://www.oecd.org/daf/corporate-affairs/governance/>). The OECD Principles are concerned primarily with corporations that are publicly traded, though many of the issues addressed by the OECD Principles are also of relevance to large non-traded corporations and state-owned companies.

This table summarizes the comments in this report, benchmarked against the main items set out in the OECD Principles of Corporate Governance. The following definitions have been agreed between the World Bank and IMF for the purposes of assessment in ROSCs.

**Observed** means that all essential criteria are generally met without any significant deficiencies

**Largely observed** means that only minor shortcomings are observed, which do not raise any questions about the authorities' ability and intent to achieve full observance within a prescribed period of time

**Materially not observed** means that, despite progress, the shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance

**Not observed** means that no substantive progress toward observance has been achieved.

Comments explaining the benchmarking and related policy recommendations are set out in the annex which follows.

### Section I: The Rights of Shareholders

#### A. Basic shareholders rights:

##### (i) Secure methods of ownership registration

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

##### (ii) Share transfer

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

##### (iii) Access to information

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

##### (iv) Participation and voting at AGM

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

##### (v) Election of (supervisory) board

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(vi) Share in the profit

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

**B. The right to participate in decisions on fundamental corporate changes:**

(i) Amendments to the statutes

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(ii) Authorization of additional shares

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(iii) Extraordinary transactions (resulting in sale of the company)

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

**C. The right to be adequately informed about, participate and vote in general shareholder meetings (AGM):**

(i) Sufficient and timely information about AGM

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(ii) Opportunity to ask question and place items on agenda

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input checked="" type="checkbox"/>

(iii) Vote in person or in absentia

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

**D. Disclosure of capital structures and arrangements enabling control disproportionate to equity ownership:**

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

**E. Efficient and transparent functioning of market for corporate control:**

(i) Clearly articulated and disclosed rules and procedures, transparent prices and fair conditions

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(ii) No use of anti-takeover devices to shield management from accountability

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input checked="" type="checkbox"/>

---

F. Requirement to weigh costs/benefits of exercising voting rights

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input checked="" type="checkbox"/>

---

## Section II: Equitable Treatment of Shareholders

A. Equal treatment of shareholders within same class

(i) Same voting rights for shareholders within each class. Ability to obtain information about voting rights attached to all classes before share acquisition. Changes in voting rights subject to shareholder vote.

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(ii) Vote by custodians or nominees in agreement with beneficial owner.

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

(iii) AGM processes and procedures allow for equitable treatment. Avoidance of undue difficulties and expenses in relation to voting.

(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

B. Prohibition of insider-trading and self-dealing

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

C. Disclosure by directors and managers of material interests in transactions or matters affecting the company.

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

## Section III: Role of Stakeholders in Corporate Governance

A.	Respect of legal stakeholder rights		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input checked="" type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input type="checkbox"/>
<hr/>			
B.	Redress for violation of rights		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed <input type="checkbox"/>
<hr/>			
C.	Performance-enhancing mechanisms for stakeholder participation		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed <input type="checkbox"/>
<hr/>			
D.	Access to relevant information		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed <input type="checkbox"/>
<hr/>			

**Section IV: Disclosure and Transparency**

A.	Disclosure of material information		
	(i) Financial and operating results		
	(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input type="checkbox"/>
	(ii) Company objectives		
	(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input type="checkbox"/>
	(iii) Major share ownership and voting rights		
	(a) Observed	<input checked="" type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input type="checkbox"/>
	(iv) (supervisory) board members, key executives and their remuneration		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input checked="" type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input type="checkbox"/>
	(v) Material foreseeable risk factors		
	(a) Observed	<input type="checkbox"/>	(b) Largely observed <input type="checkbox"/>
	(c) Materially not observed	<input type="checkbox"/>	(d) Not observed <input checked="" type="checkbox"/>
	(vi) Material issues regarding employees and other stakeholders		

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input checked="" type="checkbox"/>

(vii) Governance structures and policies

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input checked="" type="checkbox"/>

---

B. Preparation of information, audit, and disclosure in accordance with high standards of accounting, disclosure, and audit

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

C. Annual audit by independent auditor

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

D. Channels for disseminating information allow for fair, timely, and cost-efficient access to information by users

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

**Section V: Responsibilities of the Board**

A. Act on an informed basis, in good faith, with due diligence and care, in the best interest of the company and shareholders

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input type="checkbox"/>
(c) Materially not observed	<input checked="" type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

B. Fair treatment of each class of shareholders

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

C. Compliance with law and taking into account stakeholders' interests

(a) Observed	<input type="checkbox"/>	(b) Largely observed	<input checked="" type="checkbox"/>
(c) Materially not observed	<input type="checkbox"/>	(d) Not observed	<input type="checkbox"/>

---

D. Key functions:

(i) Corporate strategy, risk policy, budgets, business plans, performance objectives, implementation and performance surveillance, major capital expenditures, acquisitions, divestitures

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(ii) Selection, monitoring, replacement of key management

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(iii) Key executive and (supervisory) board remuneration, (supervisory) board nomination

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(iv) Monitoring of conflict of interest of management, (supervisory) board members, and shareholders, including misuse of corporate assets and abuse in related party transactions.

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(v) Ensuring integrity of accounting and financial reporting systems, including independent audit, systems of control, compliance with law

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(vi) Monitoring governance practices and making necessary changes

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(vii) Overseeing disclosure and communication

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

---

E. Objective judgement on corporate affairs:

(i) Assignment of non-executive (supervisory) board members to tasks of potential conflict of interest (e.g. financial reporting, remuneration)

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

(ii) Devote sufficient time to their responsibilities

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

---

F. Access to accurate, relevant, and timely information

(a) Observed  (b) Largely observed   
 (c) Materially not observed  (d) Not observed

---

## Annex: Policy Recommendations based on the OECD Principles – Assessment Matrix

Philippine corporate governance has been assessed under each of the OECD Principles of Corporate Governance in the previous table. In this annex there is a comment to explain the assessments where material or no observance is noted, and where relevant a policy recommendation is provided which addresses the issues discussed. This assessment reflects several important aspects of the recent history of enterprise in the Philippines, including: the low level of equity in corporate financing, recent initiatives to strengthen the legal and regulatory framework, and capacity building initiatives which are underway. It is recognized that initiatives led by the Philippine public and private sector, and supported through ROSCs, and the programs of ADB and World Bank are intended to address a number of areas where this assessment concludes the Philippines is currently not in full observance of the OECD Principles.

### Section I: The Rights of Shareholders

**Principle 1.** The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to: (i) secure methods of ownership registration; (ii) convey or transfer shares; (iii) obtain relevant information on the corporation on a timely and regular basis; (iv) participate and vote in general shareholder meetings; (v) elect members of the (supervisory) board; and (vi) share in the profits of the corporation.

#### A. Basic shareholders rights:

(i) Secure methods of ownership registration

**Largely observed**

(ii) Share transfer

**Observed**

(iii) Access to information

**Materially not observed**

*Comment:*

Currently shareholders in the Philippines are not able to identify the beneficial ownership of significant shareholders of listed companies.

*Policy Recommendation:*

It is recommended that shareholders be provided with the right to identify beneficial ownership of holdings above an agreed margin (for example, five percent). *This could be implemented through strengthening the powers of the Philippine Central Depository and giving the SEC powers to require disclosure by companies. A register of such disclosures could be made available to shareholders via the internet and on-site inspection.*

(iv) Participation and voting at AGM

**Observed**

(v) Election of (supervisory) board

**Observed**

(vi) Share in the profit

**Observed**

**Principle 2.** Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (i) amendments to the governing documents of the company; (ii) the authorization of additional shares; and (iii) extraordinary transactions that in effect result in the sale of the company.

B. The right to participate in decisions on fundamental corporate changes:

(i) Amendments to the statutes

**Observed**

(ii) Authorization of additional shares

**Observed**

(iii) Extraordinary transactions (resulting in sale of the company)

**Largely observed**

**Principle 3.** Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings.

C. The right to participate effectively and vote in general shareholder meetings and be informed of the rules, including voting procedures, that govern general shareholder meetings:

(i) Sufficient and timely information about AGM

**Largely observed**

(ii) Opportunity to ask question and place items on agenda

**Not observed**

*Comment:*

Shareholders do not currently have the right to convene a meeting of the company, unless indirectly through the regulator and the company is not required to provide notice to shareholders. Neither do minority shareholders have the right to put forward resolutions to the agenda which are circulated to other shareholders at the company's expense. Both

provisions are considered best practice for fostering active shareholder involvement, particularly by minorities.

*Policy Recommendation:*

It is recommended that the Philippines introduce provisions to allow minority shareholders to play a more active role in corporate governance. These would include measures to allow shareholders to convene meetings of the company, and at the company's cost. It is also recommended that a provision be introduced which allows shareholders to put forward items to agenda, which are circulated at the cost of the company. *It is recommended that the Corporate Code be reviewed, and in due course amended to address these issues, (or implement through changes in SEC rules, where possible). In the meantime the SEC can hasten implementation by encouraging listed companies to adopt these mechanisms through amendments to their by-laws where allowed.*

(iii) Vote in person or in absentia

**Observed**

**Principle 4.** Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

D. Disclosure of capital structures and arrangements enabling control disproportionate to equity ownership:

**Observed**

**Principle 5.** Markets for corporate control should be allowed to function in an efficient and transparent manner.

F. Efficient and transparent functioning of market for corporate control:

(i) Clearly articulated and disclosed rules and procedures, transparent prices and fair conditions

**Largely observed**

(iii) No use of anti-takeover devices to shield management from accountability

**Not observed**

*Comment:*

Anti-takeover devices shield management from accountability to all shareholders. It would be considered best practice to allow these to be adopted only if the minority

shareholders approve and consider them in the company's best interest. Given the concentrated pattern of ownership in the Philippines, it will be rare that minorities are able to influence the outcome of a takeover bid. The question of powers to convene meetings and file resolutions is therefore of relevance.

*Policy recommendation: It is recommended that the Philippines review provisions under the Corporation Code and SRC in order to consider restricting the voting rights of majority shareholders and related parties, on items where they have a conflict of interest, as in recent reforms in Malaysia.*

---

**Principle 6.** Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.

F. Requirement to weigh costs/benefits of exercising voting rights

**Not observed**

*Comment:*

There is no requirement in the Philippines for fiduciary investors to weigh the costs and benefits of exercising their voting rights. Best practice internationally would require that fiduciary investors, such as pension funds and mutuals, treat their voting rights as assets to be used in the interests of the beneficiaries..

*Policy Recommendations:*

Review international best practice on corporate governance requirements for pension funds and other investors handling the funds of others. Consider the establishment of an association to represent the interests of minority shareholders, which would provide advice and assistance in voting and exercising shareholder rights. In order to ensure that a sufficient community of minority shareholders is created, the minimum free float requirement for listing should be reviewed, to ensure that the rules will empower minority shareholders. For example, the super majority provisions requiring two-thirds of shareholders to approve certain corporate acts will not protect minorities unless they control more than one third of the outstanding shares. *This would require amendment to the PSE listing rules for different boards, and amendment to the Corporation Code on voting majorities and revision to the Charters of the individual pension funds.*

---

**Section II: Equitable Treatment of Shareholders**

**Principle 1.** The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally.

A. Equal treatment of shareholders within same class

(i) Same voting rights for shareholders within each class. Ability to obtain information about voting rights attached to all classes before share acquisition. Changes in voting rights subject to shareholder vote.

**Largely observed**

(ii) Vote by custodians or nominees in agreement with beneficial owner.

**Observed**

(iii) AGM processes and procedures allow for equitable treatment. Avoidance of undue difficulties and expenses in relation to voting.

**Observed**

**Principle 2.** Insider trading and abusive self-dealing should be prohibited.

B. Prohibition of insider-trading and self-dealing

**Largely observed**

**Principle 3.** Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation.

C. Disclosure by directors and managers of material interests in transactions or matters affecting the company.

**Materially not observed**

*Comment:*

Although there are requirements for the disclosure and approval for related party transactions, there is some concern in the market that the provision is not consistently adhered to in an environment of pyramid structures and majority shareholder control, with family dominance. Developing a culture of compliance in the private sector will be important to improving this, and the measures suggested to promote the role of minority shareholders and develop a code of best practice will contribute to this.

*Policy Recommendations:*

*To improve reporting and compliance on related party transactions, the SEC-PSE administrative compliance with the DOSRI rules, should be strengthened once these are fully operational.*

**Section III: Role of Stakeholders in Corporate Governance**

**Principle 1.** The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

- A. Respect of legal stakeholder rights

**Largely observed**

**Principle 2.** Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

- B. Redress for violation of rights

**Materially not observed**

*Comment:*

Some concern from market players was expressed that the costs and delays in mounting court action made it difficult for stakeholders to obtain effective redress.

**Principle 3.** The corporate governance framework should permit performance-enhancement mechanisms for stakeholder participation.

- C. Performance-enhancing mechanisms for stakeholder participation

**Materially not observed**

*Comment:*

Participation by employees in share ownership or profit sharing schemes is common in the Philippines, though it is not barred under the law.

**Principle 4.** Where stakeholders participate in the corporate governance process, they should have access to relevant information.

- D. Access to relevant information

**Materially not observed**

*Comment:*

Stakeholders do not participate in the corporate governance process in the Philippines, neither do they have special rights to information over and above what is made available to the general public.

The assessment above on stakeholder rights and redress reflects comments by market players in the Philippines during preparation of the ROSC. However, policy recommendations on these issues are beyond the scope of this ROSC, though may be addressed in other work relating to corporate governance reform. In particular, there is an opportunity to integrate stakeholder relations in the best practice recommendations for boards of directors that a Philippine code of best practice may cover.

#### **Section IV: Disclosure and Transparency**

**Principle 1.** The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and the governance of the company. Disclosure should include, but not be limited to, material information on the following sections.

A. Disclosure of material information

(i) Financial and operating results

**Observed**

(ii) Company objectives

**Observed**

(iii) Major share ownership and voting rights

**Observed**

(iv) Board members, key executives and their remuneration

**Largely observed**

(v) Material foreseeable risk factors

**Not observed** \* (see below)

(vi) Material issues regarding employees and other stakeholders

**Not observed** \* (see below)

(vii) Governance structures and policies

**Not observed** \* (see below)

*Comment:*

Currently there is no requirement for boards of directors to report on material foreseeable risk factors, material issues regarding employees and other stakeholders. Best practice suggests that these issues be addressed in a code of best practice for corporations.

*Policy Recommendations:*

*A requirement to disclose companies compliance with the code of best practice being developed by the Institute for Corporate Directors could be included in PSE listing rules and enforced by SEC. (Companies should also be asked to state any areas of non-compliance, and reasons thereto. The code would contribute to strengthening the role of the board if it included provisions on installing systems for review of board performance, and required training for directors on their role and responsibilities).*

**Principle 2.** Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.

- B. Preparation of information, audit, and disclosure in accordance with high standards of accounting, disclosure, and audit

**Materially not observed \*\*** (see below)

**Principle 3.** An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

- C. Annual audit by independent auditor

**Materially not observed \*\*** (see below)

*Comment: \*\**

Philippine accounting does not yet fully conform with International Accounting Standards, and there is a need to strengthen professional capacity and raise standards of compliance. These issues are being addressed in the parallel ROSC on audit and accounting and ADB projects. However, measures to strengthen the role of the auditor in governance system are addressed in the recommendation below.

*Policy Recommendations:*

The independence of the audit will be strengthened by requiring disclosure of all personal or business relationships, part or current, between the audit firm, its partners, the company, its directors and all related parties. It is also recommended that there should be full disclosure of audit and all other fees paid to the audit firm and the company's related parties. *These disclosures could be made in the proxy statement which includes resolutions to appoint the auditors or to pay their fee. . It is also recommended that the Philippine audit and accounting bodies review provisions and recommendations regarding rotation of audit firms and partners, in order to strengthen independence. Consideration should be given to empowering the SEC to require compliance.*

**Principle 4.** Channels for disseminating information should provide for fair, timely and cost-effective access to relevant information by users.

- D. Channels for disseminating information allow for fair, timely, and cost-efficient access to information by users

**Materially not observed**

*Comment:*

This assessment reflects the comment above regarding current compliance with GAAP which makes access to fair and timely information an issue of difficulty for some shareholders.

---

**Section V: Responsibilities of the Board**

**Principle 1.** The corporate governance 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. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

- A. Act on an informed basis, in good faith, with due diligence and care, in the best interest of the company and shareholders

**Materially not observed**

*Comment:*

The legal and regulatory framework establishes duties for the board of directors, but market players expressed the view that there was a need to raise standards of compliance and enforcement in practice. Recommendations for addressing this are set out below.

**Principle 2.** Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

- B. Fair treatment of each class of shareholders

**Largely observed**

**Principle 3.** The board should ensure compliance with applicable law and take into account the interests of stakeholders.

- C. Compliance with law and taking into account stakeholders' interests

**Largely observed**

**Principle 4.** The board should fulfill certain key functions, including the following:

- D. Key functions:

(i) Corporate strategy, risk policy, budgets, business plans, performance objectives, implementation and performance surveillance, major capital expenditures, acquisitions, divestitures

**Materially not observed**

(ii) Selection, monitoring, replacement of key management

**Materially not observed**

(iii) Key executive and (supervisory) board remuneration, (supervisory) board nomination

**Materially not observed**

(iv) Monitoring of conflict of interest of management, (supervisory) board members, and shareholders, including misuse of corporate assets and abuse in related party transactions.

**Materially not observed**

(v) Ensuring integrity of accounting and financial reporting systems, including independent audit, systems of control, compliance with law

**Materially not observed**

(vi) Monitoring governance practices and making necessary changes

**Not observed**

*Comment:*

The assessments above reflect the views of market players that there is a need to strengthen board practices in the Philippines, in common with many markets. Raising standards can be achieved through awareness raising, training and promulgation of a code of best practice which will identify the board's roles and responsibilities. It is recognised that a number of important initiatives are underway to address these issues, which will make a major contribution to addressing these weaknesses in future. The recommendations above regarding establishment of a code of best practice for companies, and disclosure requirements on compliance with this, are relevant.

(vii) Overseeing disclosure and communication

**Largely observed**

**Principle 5.** The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management.

E. Objective judgement on corporate affairs:

(i) Assignment of non-executive (supervisory) board members to tasks of potential conflict of interest (e.g. financial reporting, remuneration)

**Not observed**

*Comment:*

There is no requirement that these tasks be given to independent board members.

*Policy Recommendation:*

The suggested code of best practice should include recommendations on the role of independent board members in relation to these issues (eg audit and remuneration committees).

(ii) Devote sufficient time to their responsibilities

**Materially not observed**

*Comment:*

There is currently no requirement for directors to disclose the number of board meetings they attend, nor is there a recommended maximum number of boards upon which a director may sit.

*Policy Recommendation:*

A code of best practice could usefully address best practice on disclosure for attendance of board meetings, and also the recommended maximum number of directorships, adjusted to considerations of an individuals executive or other responsibilities.

**Principle 6.** In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

F. Access to accurate, relevant, and timely information

**Materially not observed**

*Comment:*

The appointment of many directors by controlling shareholders is considered by market players to inhibit them from questioning information provided by management, although legal provisions exist to protect their right to do so.

*Policy Recommendations:*

Moves to raise awareness, training and the development of a code of best practice, will strengthen the confidence and competence of independent directors. Establishment of independent committees with responsibility for audit, nomination and remuneration will assist in this regard.

## Appendix 1: Capital Markets Regulators

### 1. Securities and Exchange Commission

The SEC has absolute jurisdiction, supervision and control over all corporations, partnerships or associations, which are the grantees of primary franchises and/or licenses or permits issued by the government to operate in the Philippines. (Section 3, Presidential Decree No. 902-A)

The SEC has the following powers and functions:

- (a) To have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the government;
- (b) To formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;
- (c) To approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;
- (d) To regulate, investigate or supervise the activities of persons to ensure compliance;
- (e) To supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other self-regulatory organizations;
- (f) To impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;
- (g) To prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise, compliance with such rules, regulations and orders;
- (h) To enlist the aid and support of and/or deputize any and all enforcement agencies of the government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under the Corporation Code;
- (i) To issue cease and desist orders to prevent fraud or injury to the investing public;
- (j) To punish for contempt of the SEC, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;
- (k) To compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;
- (l) Issue subpoena *duces tecum* and summon witnesses to appear in any proceedings of the SEC and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;
- (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and
- (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of the express powers granted the SEC to achieve the objectives and purposes of these laws.

The SRC, which is currently being implemented by the SEC, prohibits certain practices such as manipulation of security prices, option trading, fraudulent transactions and insider trading. Furthermore, SEC has the power to regulate the securities market professionals such as brokers, dealers, salesmen and other associated persons. SEC supervises and regulate the exchanges. Exchanges have register with SEC and comply with its requirements.

## **2. Philippine Stock Exchange**

The PSE also has regulatory powers over the capital markets vis-à-vis listed companies. There are five sets of rules implemented by the PSE covering trading, clearing and settlement, fees and commissions, membership and listings. The rules on trading include those that govern trading hours, business hours, trading booths, types of orders, types of transactions, lots, cancellation of orders, identification of orders, trading halts and suspension of trading. The rules on clearing deal with clearing houses, payment and deliveries, ex-dates, and offenses. The rules on fees and commissions cover the different kinds of fees paid to the exchange and taxes. The rules on membership outline the rights and obligations of members, applications, nominees, transfer and loss of seats and suspension of privileges. Finally, the rules on listing deal with initial public offerings, Board listings, additional requirements for certain companies, offerings, and schedule of fees.

## Appendix 2: Listing Requirements of the Philippine Stock Exchange

### 1. General Principles

“Article I, Section 3, PSE Listing and Disclosure Rules - General Principles - These Rules seek to establish, develop and maintain public confidence in the market. For this purpose, the Exchange shall require that:

- (a) Applicant companies shall comply with the laws, regulations and full disclosure rules and policy of the Government;
- (b) Applicant companies shall be of a certain minimum size, under efficient and effective management, and with proven record of profitable operations;
- (c) The issuance and marketing of securities shall be conducted in a fair and orderly manner and that the distribution of securities to the public shall be widely and equitably dispersed;
- (d) Potential investors shall be given adequate, fair, timely and accurate information about the applicant company and its securities to enable them to make a properly informed assessment of the securities;
- (e) The offering of securities shall be in a fair, orderly and transparent manner;
- (f) Investors and the public shall be kept fully, accurately and timely informed by the applicant companies of all material factors that might affect their interests, and immediate timely disclosure shall be made of any material information which might reasonably be expected to have an effect on the market activity and the prices of listed securities;
- (g) Listed companies and stockholders of listed securities shall be treated fairly and equitably; and
- (h) Directors and officers of a listed company shall act in the interest of its stockholders as a whole, particularly where the public represents only a minority of the stockholders or where a director or stockholder owning substantial shares has a material interest in a transaction entered into by the listed company.”

### 2. Initial Public Offerings

#### 2.1 Required Minimum Offering (Article III, Section 2, PSE Listing and Disclosure Rules)

“Section 2. Minimum Offering to the Public - Unless otherwise provided by law or government regulation, the minimum offering to the public for initial listing shall be based on the following schedule:

<u>Market Capitalization</u>	<u>Public Offer</u>
Not exceeding P400 M	33% of P50M whichever is higher
Over P400 M to P1 B	25% or P100 M whichever is higher
Over P1 B to P5 B	20% or P250 M whichever is higher
Over P5 B to P10 B	15% or P750 M whichever is higher
Over P10 B	10% or P1 B whichever is higher”

#### 2.2 Suitability Rule (Article III, Section 3, PSE Listing and Disclosure Rules)

“Section 3. Suitability Rule; Disqualification from Listing of Securities - Notwithstanding the provisions provided in these Rules and other rules and regulations of the Exchange, the following may be grounds for disqualification from listing of securities in the Exchange:

- (a) The applicant company fails to demonstrate its stable financial condition, prospects for continuing growth or viability and sustainability of projected earnings;
- (b) Any material representation or warranty made by the applicant company in its Listing Application, and other related documents submitted in relation thereto, proves to have been incomplete, incorrect or misleading as of the time it was made or deemed to have been made;
- (c) There is a serious question relating to the integrity or capability of any of the applicant company’s director, executive officer, promoter or control person. A serious question exists relative to the above parties if, during the past Five (5) years any of the following events occurred:

- (i) Any bankruptcy petition filed by or against any business of which such person was a director, general partner or executive officer either at the time of the bankruptcy or within two (2) years prior to that time;
  - (ii) Any conviction by final judgment in a criminal proceeding for an offense involving moral turpitude, domestic or foreign, including a nolo contendere case, or being subject to a pending criminal proceeding for an offense involving moral turpitude, domestic or foreign, excluding traffic violations and other minor offenses;
  - (iii) Being subject to any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, domestic or foreign, permanently enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities, commodities or banking activities; and
  - (iv) Being found by a domestic or foreign court of competent jurisdiction (in a civil action), the SEC or comparable foreign body, or a domestic or foreign exchange or electronic marketplace or self-regulatory organization, to have violated a securities or commodities law, and the judgment has not been reversed, suspended or vacated.
- (d) The applicant company engages in operations which are contrary to the public interest, morals, good customs, public order or public policy;
  - (e) There exists an action or claim against all or substantially all of the applicant company's property;
  - (f) The applicant company or any of its officers and directors has become the subject of legal proceedings for suspension of payments or other debt relief within the past Five (5) years, or otherwise becomes unable to pay its debts as they mature or shall make or threaten to make an assignment for the benefit of, or a composition or arrangement with, creditor or any class thereof, or shall declare a moratorium on indebtedness;
  - (g) The applicant company has applied or has consented to the appointment of any receiver, trustee or similar officer, for it or substantially all of its property pursuant to the Rules of Court or other relevant laws; or a competent court, arbitrator or government agency appoints such officer, for the applicant company or all or substantially all of its property;
  - (h) The introduction of a new law or regulation or any change in existing laws or regulations, which has a material and adverse effect on the applicant company;
  - (i) There is a change or impending change in any law, rule, regulation, administrative practice or interpretation that could materially affect any of the features, yield, marketability of the securities sought to be listed;
  - (j) An order is issued by the SEC or any government agency canceling, terminating, suspending or otherwise prohibiting the listing of securities of the applicant company;
  - (k) The Exchange has determined that transactions entered into between the applicant company and its directors and/or officers pose material conflict(s) of interest and are disadvantageous to the applicant company using the following criteria:
    - (i) The arrangement is unnecessary or not beneficial to the operations of the company;
    - (ii) The terms of the arrangement are not the same or less favorable than those which may be obtained from other persons;
    - (iii) The transaction has not been ratified by independent directors and/or shareholders; and
    - (iv) The transaction has not been adequately disclosed to existing shareholders.
  - (l) The applicant company fails to comply with published rules and requirements which the Exchange may deem necessary and hereinafter prescribe; and
  - (m) Any other event or circumstance which in the judgment of the Exchange, in its conduct of due diligence, may render the listing of the applicant company inconsistent with these Rules."

### **2.3 Engagement of Underwriter ("Article III, Section 7, PSE Listing and Disclosure Rules)**

"Section 7. Engagement of Underwriter - The applicant company shall engage the services of a duly licensed underwriter, who, among others, shall firmly underwrite the entire issue. The underwriter may likewise act as the applicant's lead underwriter/issue manager. The applicant company may at its option, engage the services of another entity to act as its lead underwriter/issue manager to manage the issue. The lead underwriters shall warrant that it has exercised due diligence in ascertaining that all material representations contained in the applicant's prospectus or offering memorandum, their amendments or supplements are true and correct, and that no material information

was omitted, which was necessary in order to make the statements contained in the applicant's prospectus or offering memorandum not misleading."

## **2.4 Engagement of Stock Transfer Agent - Article III, Section 8, PSE Listing and Disclosure Rules**

"Section 8. Engagement of Stock Transfer Agent - The applicant company shall engage the services of a stock transfer agent, which shall be:

- (a) Duly licensed by the SEC; and
- (b) Acceptable to the Exchange

All applicants for additional listing of shares shall submit proof that their stock transfer agent is in compliance with items (a) and (b) hereof.

An applicant shall take full responsibility for all the acts of its transfer agent. The applicant shall execute and submit an Undertaking holding itself jointly and severally liable for all acts of its transfer agent in relation to the issue."

## **2.5 Registration of Securities with PCIDI; Delivery of Stock Certificates (Article III, Section 12, PSE Listing and Disclosure Rules)**

As a matter of policy, the Exchange requires the applicant company to register and lodge its securities for IPO in the Philippine Central Depository, Inc. (PCDI). Actual listing and trading of shares on the scheduled listing date shall take effect only after submission by the applicant company of a sworn corporate secretary's certificate stating that all the shares have already been properly lodged with the PCDI.

## **3. Continuing Listing Requirements (Article XVIII, PSE Listing and Disclosure Rules)**

**3.1 "Section 1. Payment of Annual Maintenance Fee** - The listed company shall pay the annual maintenance fee assessed by and within the period prescribed by the Exchange for all listed companies."

**3.2 "Section 2. Minimum Trading Volume** - The listed company shall maintain the minimum trading volume specified under guidelines which shall be issued by the Exchange on an annual basis." (Note: currently not being enforced by the Exchange.)

**3.3 "Section 3. Minimum Percentage of Public Ownership** - The applicant shall maintain the minimum ownership reserved for the public as follows:

<u>Market Capitalization</u>	<u>Public Ownership</u>
Not exceeding P400 M	33%
P400 M - P1 B	25%
P1B - P5 B	20%
P5B - P10 B	15%
P10 B	10%

"The percentage of public ownership shall constitute the portion of the outstanding capital stock of the company held by public shareholders as defined in these rules. This requirement may be suspended by the Exchange." (Note: this requirement is currently suspended.)

**3.4 "Section 4. Minimum number of Stockholders** - The minimum number of stockholders shall be one thousand (1,000) for the First Board, five hundred (500) for the Second Board and fifty (50) for the SME Board.

"For purposes of this rule, only stockholders owning shares equivalent to at least one Board lot shall be considered in determining the minimum number of stockholders.

“The Exchange shall suspend the trading of the shares of listed companies which have not complied with the rule on minimum number of stockholders owning at least one (1) Board lot each within thirty (30) working days from receipt of the letter from the Exchange; Provided, that the concerned listed company shall submit its dispersal plan within fifteen (15) working days from receipt of the letter from the Exchange; Provided, finally, that the concerned listed company shall implement its dispersal plan within fifteen (15) working days from date of submission thereof to the Exchange.”

### **3.5 Continuing Structured and Unstructured Disclosure Requirements**

PSE requires listed companies to comply with certain disclosures categorized as: (i) Structured Continuing Disclosures (Article XIX, PSE Listing and Disclosure Rules), which are the periodic reportorial requirements required by the SEC and the PSE and includes the Annual Report, Quarterly Reports, List of Stockholders; or (ii) Unstructured Continuing Disclosures (Article XX, PSE Listing and Disclosure Rules), which are disclosures of corporate developments to the investing public as they occur.

Listed companies are required to submit to PSE a list of stockholders entitled to notice and to vote at a regular or special stockholders meeting not later than five trading days after the record date fixed by the issuer for the holding of such meeting (Article XIX, Section 13, Philippine Stock Exchange Listing and Disclosure Rules). They are also required to submit a list of their top 20 stockholders on a quarterly basis (Article XIX, Section 14, Philippine Stock Exchange Listing and Disclosure Rules).

Listed companies with foreign ownership limits are required to submit to the PSE on a monthly basis, information using a prescribed form that is sufficient to enable the Exchange to know the exact number of shares owned by foreign shareholders. (Article XIX, Section 15, PSE Listing and Disclosure Rules).

## **Appendix 3: Schedule of Sanctions and Penalties for Breach of Listing and Disclosure Requirements of the PSE**

### **1. Penalties for Failure to Comply with Continuing Listing Requirements**

#### **1.1 Failure to Comply with Structured Continuing Disclosure Requirements**

“Section 2. Criteria for Delisting - A listed company that is experiencing one of the following conditions shall be considered for delisting:

- (a) The listed company has failed to comply with the Listing Agreement or the Listing Rules of the Exchange, now or hereafter in effect, despite notice and after the lapse of the period specified; x x x”

### **2. Penalties for Failure to Comply with Continuing Disclosure Requirements**

#### **2.1 Failure to Comply with Structured Continuing Disclosure Requirements**

- Article XIX, Section 9, PSE Listing and Disclosure Rules

“Section 9. Sanctions for Non-Compliance with Certain Structured Reportorial Requirements - The following sanctions shall be imposed for failure to comply with the following structured reportorial requirements of the Exchange:

- (a) Annual Report using SEC Form 17

- (1) In event that a listed company fails to submit two hundred (200) copies of its Annual Report using SEC Form 17-A within one hundred five (105) calendar days after the end of the fiscal year or any valid extension thereof, the Exchange shall notify and grant the listed company a period of fifteen (15) calendar days within which to comply.
- (2) Should the listed company, after the lapse of the fifteen (15) day period, still fail to submit the required report, the Exchange shall impose a basic fine in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange. The listed company shall be given another period of thirty (30) calendar days within which to submit said report and pay the basic fine.
- (3) After the lapse of the said thirty (30) day period, the Exchange shall commence imposing the daily fine for each day of non-compliance, in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange within another period of thirty (30) days. The Exchange shall likewise warn the company that no earlier than ten (10) calendar days prior to the lapse of the said thirty (30) day period, the member-brokers and the investing public shall be notified, through a circular, of the fact of non-compliance with a warning that failure to comply with the requirements of the Exchange shall result in the automatic suspension of the trading of the company's shares for a maximum period of six (6) months suspension period, the daily fine shall not be applied.
- (4) After the lapse of the suspension period and the company still failed to comply with the reportorial requirement, the Exchange shall initiate delisting procedure.
- (5) Should the company, on the other hand, be able to submit its Annual Report but fail to pay the basic fine within the period provided, a fine for each day of non-payment, in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange, shall be imposed for a period of thirty (30) days. In addition to the foregoing, the listed company shall be considered delinquent by the Exchange. Thus, any application for additional listing of a delinquent company shall not be processed until it has been cleared of its penalty in arrears. Likewise, any request for issuance of clearance or certificate of good standing shall not be entertained by the Exchange. Should the Company still fail to settle its obligation to pay the basic fine, the trading of the shares of the delinquent company shall be automatically suspended for

a maximum period of six (6) months. Upon the expiration of the said six (6) month period, the Exchange shall initiate delisting procedures.

(b) Quarterly Report Using SEC Form 17-Q

- (1) In the event that a listed company fails to submit two hundred (200) copies of its Quarterly Report using SEC Form 17-Q within Forty-five (45) calendar days after the end of the quarter or any valid extension thereof, the Exchange shall notify and grant the listed company a period of fifteen (15) calendar days within which to comply.
- (2) Should the listed company, after the lapse of the fifteen (15) day period, still fail to submit the required report, the Exchange shall impose a basic fine in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange. The listed company shall be given another period of Twenty (20) calendar days within which to submit said report.
- (3) After the lapse of the said twenty (20) day period, the Exchange shall commence imposing the daily fine for each day of non-compliance, in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange within another period of thirty (30) days. The Exchange shall likewise warn the company that no earlier than seven (7) calendar days prior to the lapse of the said twenty (20) day period, the member-brokers and the investing public shall be notified, through circular, of the fact of non-compliance with a warning that failure to comply with the requirement of the Exchange shall result in the automatic suspension of the trading of the company's shares for a maximum period of six (6) months. During the six (6) months suspension period, the daily fine shall not be applied.
- (4) After the lapse of the suspension period and the company still failed to comply with the reportorial requirement, the Exchange shall initiate delisting procedures.
- (5) Should the company, on the other hand, be able to submit its Quarterly Report but fail to pay the basic fine within the period provided, a fine for each day of non-payment, in accordance with the New Scale of Fines for Non-compliance with the Reportorial Requirements of the Exchange, shall be imposed for a period of thirty (30) days. In addition to the foregoing, the listed company shall be considered delinquent by the Exchange.

Thus, any application for additional listing of a delinquent company shall not be processed until it has been cleared of its penalty in arrears. Likewise, any request for issuance of clearance or certificate of good standing shall not be entertained by the Exchange. Should the Company still fail to settle its obligation to pay the basic fine, the trading of the shares of the delinquent company shall be automatically suspended for a maximum period of six (6) months. Upon the expiration of the said six (6) month period, the Exchange shall initiate delisting procedures.

- Article XIX, Section 9, PSE Listing and Disclosure Rules
- Article XIX, Section 10, PSE Listing and Disclosure Rules

“Section 10. Scale of Fines for Non-Compliance with Reportorial Requirements - Non-compliance with the rules on filing of Annual Report and Quarterly Report by listed companies shall be subject to the penalty prescribed in this New Schedule of Fines:

Total Assets (Based on latest FS)	Maximum Penalty	Basic Fine <b>II.</b>	<b>Per Day of Del a y</b>	Penalty Per Year/ Per Violation
Less than P25 M	P5,000	P500		P50,000
P25 M to Less than P30M	P6,000	P600		P60,000
P30M to Less than P45 M	P7,000	P700		P70,000

P45M to Less than P50 M	P8,000	P800	P80,000
P60 M to Less than P80 M	P10,000	P1,000	P100,000
P80M to Less than P100M	P12,000	P1,200	P120,000
P100M to Less than P150M	P14,000	P1,400	P140,000
P150 M to Less than P200 M	P16,000	P1,600	P160,000
P200 M to Less than P250 M	P18,000	P1,800	P180,000
P250 M to Less than P300 M	P20,000	P2,000	P200,000
P300 M to Less than P350 M	P22,500	P2,250	P225,000
P350 M to Less than P400 M	P25,500	P2,500	P250,000
P400 M to Less than P450 M	P27,500	P2,750	P275,000
P450 M to Less than P500 M	P30,000	P3,000	P300,000
P500 M to Less than P600 M	P33,000	P3,300	P330,000
P600 M to Less than P700 M	P36,000	P3,600	P360,000
P700 M to Less than P800 M	P39,000	P3,900	P390,000
P800 M to Less than P900 M	P42,000	P4,200	P420,000
P900 M to Less than P1B	P45,000	P4,500	P450,000
P1 B and above	P50,000	P5,000	P500,000

The payment of the foregoing fines shall be without prejudice to the imposition of other penalties for habitual violation of the aforementioned reportorial rules.

## 2.2 Failure to Comply with Unstructured Continuing Disclosure Requirements

- Article XX, Section 21, PSE Listing and Disclosure Rules

“Section 21. Penalty for Non-compliance with Unstructured Disclosure Requirements - Except as otherwise provided in this Rules, any violations of the terms and conditions of the Listing Agreement and of this Rules, except for fraud of the market, manipulation and other offenses under the Revised Securities Act, shall make the issuer liable for the following penalties within a period of twelve (12) months.

First violation	P50,000
Second Violation of a similar nature	P75,000
Third violation	Suspension of trading the issue for a period of one (1) month
Fourth violation	Ground for de-listing

“An additional fine of P1,000 shall be imposed for each trading day during which the offense continues until and including the day on which the violation is corrected. Failure to pay within one (1) month from the imposition of penalty will result in the suspension of trading of the securities of the violator.

“Offenses involving fraud, concealment and other offenses specified in the RSA shall be referred to the Board for its appropriate action.”

## Appendix 4: Provisions of the SRC on Insider Trading

### 1. Section 27, SRC – *Insider Duty to Disclose When Trading*

“Sec. 27.1 - It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from such relationship; or (b) If the party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider’s spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material nonpublic information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material nonpublic information at the time of the purchase or sale.

“Section 27.2 - For purposes of this Section, information is “material nonpublic” if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

“Section 27.3 - It shall be unlawful for any insider to communicate material nonpublic information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

“Section 27.4 (a) - It shall be unlawful where a tender offer has commenced or is about to commence for:

- Any person (other than the tender offeror) who is in possession of material nonpublic information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is nonpublic and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and
- Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material nonpublic information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4(a)(i).

“Sec. 27.4 (b) - For purposes of this subsection the term “securities of the issuer sought or to be sought by such tender offer” shall include any securities convertible or exchangeable into such securities or any options or rights in any of the foregoing securities.”

### 2. Section 3.8, SRC – *Definition of an Insider*

“Insider” means: (a) the issuer; (b) a director or officer (or person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any of the foregoing insiders.”

## Appendix 5: Penalties for Insider Trading under the SRC

The penalties for violation of Section 27 of the SRC involve both civil and criminal liabilities as well as administrative sanctions.

### 1. Section 61, SRC – *Civil Liabilities on Account of Insider Trading*

“Sec. 61.1 - Any insider who violates Subsection 27.1 and any person in the case of a tender offer who violates Subsection 27.4 (a)(i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in a suit brought by an investor who, contemporaneously with the purchase or sale of securities that is the subject of violation, purchased or sold securities of the same class unless such insider, or such person in the case of a tender offer, proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to him.

“Sec. 61.2 - An insider who violates Subsection 27.3 or any person in the case of a tender offer who violates Subsection 27.4(a), or any rule or regulation thereunder, by communicating material nonpublic information, shall be jointly and severally liable under Subsection 61.1 with, and to the same extent as, the insider, or person in the case of a tender offer, to whom the communication was directed and who is liable under Subsection 61.1 by reason of his purchase or sale of a security.”

### 2. Section 73, SRC - *Penalties*

“SEC. 73. - Any person who violates any of the provisions of this Code, or the rules and regulations promulgated by the SEC under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (₱ 50,000) nor more than Five Million Pesos (₱ 5,000,000) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity and upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.”

### 3. Section 54, SRC – *Administrative Sanctions*

“Sec. 54.1 - If, after due notice and hearing, the SEC finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the SEC, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

- (i) Suspension or revocation of any registration for the offering of securities;
- (ii) A fine of no less than Ten thousand pesos (₱ 10,000,000) nor more than One million pesos (₱ 1,000,000) plus not more than Two thousand pesos (₱ 2,000) for each day of continuing violation;
- (iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the board of directors, or person performing similar functions, of an issuer

require to file reports under Section 17 of this Code or any other act, rule or regulation administered by the SEC;

- (iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and
- (v) Other penalties within the power of the SEC to impose.”

“Sec. 5.4 - The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.”

## **Appendix 6: Required Disclosure on Directors, Executive Officers, Promoters and Control Persons; and Experts and Independent Counsel**

The SRC requires disclosure in the Annual Report, Proxy or Information Statement filed with the SEC by a public company, including in the Registration Statement and Prospectus submitted to SEC to register new issues of shares, of the following information:

### **1. Directors, Executive Officers, Promoters and Control Persons**

- a) List of names and ages of all directors and executive officers and all persons nominated or chosen to become such;
- b) List of the positions and offices that each such person held or will hold, if known, with the registrant;
- c) The term of office as director and the period during which the person has served;
- d) Description of the person's business experience during the past five years;
- e) If a director, other directorships held in reporting companies, naming each company;
- f) Family relationships among directors, executive officers or persons nominated or chosen by the registrant to become directors or executive officers;
- g) Involvement in legal proceedings by a director, executive officer, promoter or control person of the registrant, such as:
  - Any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;
  - Any conviction by final judgment in a criminal proceeding, domestic or foreign, or being subject to a pending criminal proceeding, domestic or foreign, excluding traffic violations and other minor offenses;
  - Being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, domestic or foreign, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities, commodities or banking activities; and
  - Being found by a domestic or foreign court of competent jurisdiction (in a civil action), the Securities and Exchange Commission or comparable foreign body, or a domestic or foreign exchange or electronic marketplace or self-regulatory organization, to have violated a securities or commodities law, and the judgment has not been reversed, suspended or vacated.
- h) Information on compensation, which shall include the compensation of all individuals serving as the registrant's chief executive officer, regardless of compensation level, the registrant's four most highly compensated executive officers other than the chief executive officer and the aggregate compensation of all officers and directors as a group.
- i) Information on any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director.
- j) Information as to each class of equity securities of the public company or any of its parents or subsidiaries beneficially owned by all directors and nominees (Section 23, SRC).

### **2. Experts and Independent Counsel**

SRC requires the listed company to disclose in the Registration Statement and Prospectus its interest or connection with "experts" and "independent counsel" when hired on a contingent basis and he will receive a direct or indirect interest in the company; and when he was a promoter, underwriter, voting trustee, director, officer or employee of the company. However, the disclosure is not required if the interest of the expert or independent counsel does not exceed P 500,000.

SRC defines an "expert" as a person who is named as having prepared or certified all or part of the registrant's registration statement or a report or valuation for use in connection with the Registration Statement. An "independent counsel" under SRC is the independent counsel named in the Prospectus

as having given an opinion on the validity of the securities being registered or upon other legal matters concerning the registration or offering of the securities.

## **Appendix 7: Foreign Investment Negative – Regulation and Full List**

EXECUTIVE ORDER NO. 286

### **PROMULGATING THE FOURTH REGULAR FOREIGN INVESTMENT NEGATIVE LIST**

WHEREAS, Republic Act (RA) No. 7042 also known as the Foreign Investments Act of 1991, as amended by RA 8179, provides for the formulation of a Regular Foreign Investment Negative List covering investment areas/activities which may be opened to foreign investors and/or reserved to Filipino nationals;

WHEREAS, the Regular Foreign Investment Negative List, consisting of Lists A and B, is effective for two years pursuant to Section 8 of RA 7042 as amended and its Implementing Rules and Regulations;

WHEREAS, there is a need to formulate a Fourth Regular Foreign Investment Negative List in view of the expiration of the existing list on 23 October 2000 and to reflect changes to List A and B provided in new laws and recommended by concerned government agencies;

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Only the investment areas and/or activities listed in Annex A herewith shall be reserved to Philippine nationals, and hereafter shall be referred to as the Fourth Regular Foreign Investment Negative List. The extent of foreign equity participation in these areas shall be limited to the percentages indicated in the List.

SECTION 2. Any amendment to List A may be made at any time to reflect changes instituted in specific laws while amendments to List B shall not be made more often than once every two years, pursuant to Section 8 of RA 7042 as amended, and of its Implementing Rules and Regulations.

SECTION 3. All orders, issuances, rules and regulations or parts thereof, which are inconsistent with this Order are hereby revoked or modified accordingly.

SECTION 4. This Order shall take effect on 24 October 2000.

#### **LIST A: FOREIGN OWNERSHIP IS LIMITED BY MANDATE OF THE CONSTITUTION AND SPECIFIC LAWS**

##### **No Foreign Equity**

1. Mass media except recording (Art. XVI, Sec. 11 of the Constitution; Presidential Memorandum dated 04 May 1994)
2. Practice of all professions
  - a. Engineering
    - i. Aeronautical engineering
    - ii. Agricultural engineering
    - iii. Chemical engineering
    - iv. Civil engineering
    - v. Electrical engineering
    - vi. Electronics and communication engineering
    - vii. Geodetic engineering
    - viii. Mechanical engineering
    - ix. Metallurgical engineering
    - x. Mining engineering
    - xi. Naval architecture and marine engineering
  - b. Sanitary engineering
  - c. Medicine and allied professions
    - i. Medicine
    - ii. Medical technology

- iii. Dentistry
  - iv. Midwifery
  - v. Nursing
  - vi. Nutrition and dietetics
  - vii. Optometry
  - viii. Pharmacy
  - ix. Physical and occupational therapy
  - x. Radiologic and x-ray technology
  - xi. Veterinary medicine
- c. Accountancy
  - d. Architecture
  - e. Criminology
  - f. Chemistry
  - g. Customs brokerage
  - h. Environmental planning
  - i. Forestry
  - j. Geology
  - k. Interior design
  - l. Landscape architecture
  - m. Law
  - n. Librarianship
  - o. Marine deck officers
  - p. Marine engine officers
  - q. Master plumbing
  - r. Sugar technology
  - s. Social work
  - t. Teaching
- (Art. XII, Sec. 14 of the Constitution; Sec. 1 of Republic Act No. 5181)
- 3. Retail trade enterprises with paid-up capital of less than US\$2,500,000 (Sec. 5 of RA 8762) aSACED
  - 4. Cooperatives (Ch. III, Art. 26 of RA 6938)
  - 5. Private security agencies (Sec. 4 of RA 5487)
  - 6. Small-scale mining (Sec. 3 of RA 7076)
  - 7. Utilization of marine resources in archipelagic waters, territorial sea, and exclusive economic zone (Art. XII, Sec. 2 of the Constitution)
  - 8. Ownership, operation and management of cockpits (Sec. 5 of Presidential Decree No. 449)
  - 9. Manufacture, repair, stockpiling and/or distribution of nuclear weapons (Art. II, Sec. 8 of the Constitution)
  - 2
  - 10. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons (Various treaties to which the Philippines is a signatory and conventions supported by the Philippines) 2
  - 11. Manufacture of firecrackers and other pyrotechnic devices (Sec. 5 of RA 7183)

### **Up to Twenty-Five Percent (25%) Foreign Equity**

- 12. **Private recruitment**, whether for local or overseas employment (Art. 27 of PD 442)
- 13. Contracts for the **construction and repair of locally-funded public works** (Sec. 1 of Commonwealth Act No. 541, Letter of Instruction No. 630) except:
  - a. Infrastructure/development projects covered in RA 7718; and
  - b. Projects which are foreign funded or assisted and required to undergo international competitive bidding (Sec. 2(a) of RA 7718)

### **III. Up to Thirty Percent (30%) Foreign Equity**

- 14. **Advertising** (Art. XVI, Sec. 11 of the Constitution)

### **IV. Up to Forty Percent (40%) Foreign Equity**

- 15. Exploration, development and utilization of **natural resources** (Art. XII, Sec. 2 of the Constitution) 3
- 16. **Ownership of private lands** (Art. XII, Sec. 7 of the Constitution; Ch. 5, Sec. 22 of CA 141)

17. Operation and management of **public utilities** (Art. XII, Sec. 11 of the Constitution; Sec. 16 of CA 146) IcaHTA
18. Ownership/establishment and administration of **educational institutions** (Art. XIV, Sec. 4 of the Constitution)
19. Culture, production, milling, processing, trading excepting retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof 4 (Sec. 5 of PD 194; Sec. 15 of RA 8762)
20. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation,  
company, agency or municipal corporation (Sec. 1 of RA 5183) SADECI
21. Contracts for the construction of defense-related structures (Sec. 1 of CA 541)
22. Project Proponent and Facility Operator of a BOT Project requiring a public utilities franchise (Art. XII, Sec. 11 of  
the Constitution; Sec. 2(a) of RA 7718)
23. Operation of **deep sea commercial fishing vessels** (Sec. 27 of RA 8550)
24. Adjustment companies (Sec. 323 of PD 612 as amended by PD 1814)
25. **Ownership of condominiums** units where the common areas in the condominium project are co-owned by the owners of the separate units or owned by a corporation (Sec. 5 of RA 4726)

#### ***V. Up to Sixty Percent (60%) Foreign Equity***

26. **Financing companies** regulated by the Securities and Exchange Commission (SEC) (Sec. 6 of RA 5980 as amended by RA 8556)
27. **Investment houses** regulated by the SEC (Sec. 5 of PD 129 as amended by RA 8366) 5
28. **Retail trade enterprises with a minimum paid-up capital of US\$2,500,000 but less than US\$7,500,000** (Sec. 5 of RA 8762)

### **LIST B: FOREIGN OWNERSHIP IS LIMITED FOR REASONS OF SECURITY, DEFENSE, RISK TO HEALTH AND MORALS AND PROTECTION OF SMALL- AND MEDIUM-SCALE ENTERPRISES**

#### ***VI. Up to Forty Percent (40%) Foreign Equity***

1. Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:
  - a. Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms
  - b. Gunpowder
  - c. Dynamite
  - d. Blasting supplies
  - e. Ingredients used in making explosives:
    - i. Chlorates of potassium and sodium
    - ii. Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium and cuprite
    - iii. Nitric acid
    - iv. Nitrocellulose
    - v. Perchlorates of ammonium, potassium and sodium
    - vi. Dinitrocellulose
    - vii. Glycerol
    - viii. Amorphous phosphorus
    - ix. Hydrogen peroxide
    - x. Strontium nitrate powder
    - xi. Toluene
  - f. Telescopic sights, sniper scope and other similar devices (RA 7042 as amended by RA 8179)
2. Manufacture, repair, storage and/or distribution of products requiring Department of National Defense (DND) clearance:

- a. Guns and ammunition for warfare
  - b. Military ordinance and parts thereof (e.g., torpedoes, mines, depth charges, bombs, grenades, missiles)
  - c. Gunnery, bombing and fire control systems and components
  - d. Guided missiles/missile systems and components
  - e. Tactical aircraft (fixed and rotary-winged), parts and components thereof
  - f. Space vehicles and component systems
  - g. Combat vessels (air, land and naval) and auxiliaries
  - h. Weapons repair and maintenance equipment
  - i. Military communications equipment
  - j. Night vision equipment
  - k. Stimulated coherent radiation devices, components and accessories
  - l. Armament training devices
  - m. Others as may be determined by the Secretary of the Department of National Defense (RA 7042 as amended by RA 8179)
3. **Manufacture and distribution of dangerous drugs (RA 7042 as amended by RA 8179)**
  4. Sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks they impose to public health and morals (RA 7042 as amended by RA 8179)
  5. All forms of gambling, e.g. race track operation (RA 7042 as amended by RA 8179)
  6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000 (RA 7042 as amended by RA 8179)
  7. Domestic market enterprises which involve advanced technology or employ at least fifty (50) direct employees with paid-in-equity capital of less than the equivalent of US\$100,000 (RA 7042 as amended by RA 8179)

---

Footnotes

1. This is limited to Filipino citizens save in cases prescribed by law
2. Domestic investments are also prohibited (Art. II, Sec. 8 of the Constitution; Conventions/Treaties to which the Philippines is a signatory)
3. **Full foreign participation is allowed through financial or technical assistance agreement with the President (Art. XII, Sec. 2 of the Constitution)**
4. Full foreign participation is allowed provided that within the 30-year period from start of operation, the foreign investor shall divest a minimum of 60 percent of their equity to Filipino citizens (Sec. 5 of PD 194; NFA Council Resolution No. 193 s. 1998)
5. No foreign national may be allowed to own stock in financing companies or investment houses unless the country of which he is a national accords the same reciprocal rights to Filipinos (Sec. 6 of RA 5980 as amended by RA 8556; PD 129 as amended by RA 8366)
6. Full foreign participation shall be allowed after 25 March 2002 but in no case shall investments for establishing a store be less than US\$830,000. Full foreign participation is currently allowed in the following categories: C) Enterprises with a paid-up capital of US\$7,500,000 or more, provided that investments for establishing a store should not be less than US\$830,000; and D) Enterprises specializing in high-end or luxury products, provided that the paid-up capital per store is not less than US\$250,000 (Sec. 5 of RA 8762)

## Appendix 8: Tables on Market Information for PSE

**Table 1: Number of companies registered with the SEC**

### Number of Companies Registered with SEC

As of April 10, 2001

Status	Domestic Stock Corporation	Domestic Non-Stock Corporations	Total Domestic Corporations	Domestic Partnerships	Total Business Firms
Active	233,438	136,218	369,656	57,163	426,819
Suspended	25,981	1,998	27,979	-	27,979
Dissolved	2,985	1,664	4,649	9,248	13,897
Revoked	3,222	2,637	5,859	4	5,863
<b>Total</b>	<b>265,626</b>	<b>142,517</b>	<b>408,143</b>	<b>66,415</b>	<b>474,558</b>

Source: Securities and Exchange Commission

**Table 2: Number of companies cited for violation of PSE reporting and disclosure rules**

**Number of Listed Companies Cited  
for Violation of PSE Reporting and Disclosure Rules, 1997-2000**

Violations of PSE Reporting and Disclosure Rules	Number of Companies			
	1997	1998	1999	2000
<b>A. Financial Reporting</b>				Due on April 16, 2001
1. Non-submission/delayed submission of Annual Reports	40	29	32	26
2. Non submission/delayed submission of Quarterly Reports	-	34	24	26
<b>B. Disclosure</b>				
1. Non-disclosure of Material Information	-	-	55	17
<b>C. Penalties</b>				
1. Halted trading of shares due to non-disclosure of material information based on newspaper reports	-	-	55	-
2. Listed companies penalized	40	63	44	43

Source: Disclosure Department, PSE