

UPGRADING THE PINOY CAPITALIST SYSTEM FOR A BETTER POST- PANDEMIC PHILIPPINES

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PHILIPPINE CORPORATE GOVERNANCE

- “It is the Board’s responsibility *to foster the long-term success of the corporation and secure its sustained competitiveness in a manner consistent with its fiduciary responsibility*, which it should exercise in the best interest of the corporation and its shareholders.”
- “A director assumes certain responsibilities to different constituencies or *stakeholders, who have the right to expect that the institution is being run in a prudent and sound manner.*”

Code of Corporate Governance (2002)

Corporate Governance – the system of stewardship and control *to guide organizations in fulfilling their long-term economic, moral, legal and social obligations towards their shareholders/members and other stakeholders.*

... a system of direction, feedback and control using regulations, performance standards and *ethical guidelines to hold the Board of Directors and Senior Management accountable for ensuring ethical behavior and reconciling long-term customer satisfaction with shareholder /member value to the benefit of all stakeholders and society.*

Its purpose is to maximize the organization's long-term success, thereby creating sustainable value for its shareholders/members, other stakeholders and the nation.

Code of Corporate Governance for PLCs (2016)

“COMPLY OR EXPLAIN APPROACH”

CODE OF CORPORATE GOVERNANCE FOR PLCs:

(SEC Memo Circular No. 19-2016, 22 November 2016)

2. The [CG] Code will adopt the “*comply or explain*” approach. This approach combines voluntary compliance with mandatory disclosure. Companies do not have to comply with the Code, but they must state in their Annual Corporate Governance Reports [ACGR] whether they comply with the Code provisions, identify any areas of non-compliance, and explain the reasons for non-compliance.

CG FRAMEWORK UNDER THE REVISED CORPORATION CODE

1. Institution of “*Corporations vested with public interests*”
2. [Over-] Criminalization of Compliance Enforcement to Corporate Governance Principles and Best Practices
 - ✓ SEC Granted Power to Impose Administrative Sanctions on violations of the Revised Corporation Code (Sec. 158)
 - ✓ Eleven Broadly-defined Governance Malpractices
 - ✓ Criminal Sanctions of All Other Violations of the Provisions of the Revised Corporation Code (Sec. 170)
 - ✓ Criminal Conviction without Prejudice to Separate Imposition of Administrative Sanctions (Sec. 170)

OVER-CRIMINALIZATION OF THE CORPORATE GOVERNANCE REGIME

Sec. 159: Corporation's Unauthorized Use of Corporate Name

Sec. 160: Violation of Director's Disqualification Provisions

Sec. 161: Violation of Duty to Maintain Records, Allow Inspection/Reproduction

Sec. 162: Certifying Incomplete/Inaccurate, False/Misleading Statements

Sec. 163: Collusion by Independent Auditor

Sec. 164: Obtaining Corporate Registration through Fraud

Sec. 165: Corporation's Fraudulent Conduct of Business Through Fraud

Sec. 166: Corporation's Acting as Intermediary for Graft and Corrupt Practices

Sec. 167: Corporation's Engaging Intermediaries for Graft and Corrupt Practices

Sec. 168: Tolerating Graft and Corrupt Practices

Sec. 169: Retaliation Against Whistleblowers

SEC. 165: FRAUDULENT CONDUCT OF BUSINESS

“A corporation that conducts its business through fraud,” shall be punished with a fine ranging from ₱200,000 to ₱2 Million; increased to ₱400,000 to ₱5 Million “*when injurious or detrimental to the public.*”

SEC. 166: CORPORATION ACTING AS INTERMEDIARY FOR FRAUD

“A corporation *used for fraud*, ... as defined under pertinent statutes,” shall be punished with a fine ranging from ₱100,000 to ₱5 Million.

SEC. 166: CORPORATION ACTING AS INTERMEDIARY FOR GRAFT AND CORRUPT PRACTICES

“A corporation *used* ... for committing or concealing graft and corrupt practices as defined under pertinent statutes,” shall be punished with a fine ranging from ₱100,000 to ₱5 Million.

SEC. 167: CORPORATION APPOINTING INTERMEDIARIES TO ENGAGE IN GRAFT AND CORRUPT PRACTICES

“ A corporation that appoints an intermediary who engages in graft and corrupt practices for the corporation’s benefit or interest ” shall be punished with a fine ranging from ₱100,000 to ₱1 Million.

*Where Does the Corporate Governance
Framework of the Revised Corporation Code
Lead our Country?*

EFFECTS AND CONSEQUENCES OF CRIMINALIZATION OF CG REGIME UNDER THE REVISED CORPORATION CODE

Sends a Chilling Effect on the Infrastructure Intended to Promote the Use of the Corporate Medium in Pursuit of Business.

EFFECTS AND CONSEQUENCES OF CRIMINALIZATION OF CG REGIME UNDER THE REVISED CORPORATION CODE

Adversely Affects Commercial Value of Investors, especially Foreign Investors, in Publicly-Held Companies.

EFFECTS AND CONSEQUENCES OF CRIMINALIZATION OF CG REGIME UNDER THE REVISED CORPORATION CODE

Creates Unnecessary “Unease of Doing Business” through the Corporate Medium:

- *Unduly Crimps on the Exercise of Business Judgment.*
- *Unduly Promotes “Greenmail” and Harassment Suits by Wily Stockholders or Even Stakeholders.*

SEC MAY BE THE BRIGHT SIDE

Sec. 154, RCC: SEC has power to investigate an alleged violation of this Code, or of a rule, regulation, or order the Commission.

- ❖ SEC may determine which types of violations it would pursue in the criminal justice system.

Morato v. Court of Appeals, 436 SCRA 438 (2004);
SEC v. Interport Resources Corp., 567 SCRA 354 (2008).

“PRIVATE PROPERTY BEARS A SOCIAL FUNCTION”

... The use of property bears a social function, and all economic agents shall contribute to the common good. Individual and private groups, including corporations, cooperatives and similar collective organization, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

Section 6, Article XII (National Economy and Patrimony), Philippine Constitution

- END OF PRESENTATION -