

Amendments to the Corporate Governance Code: Weighing the Challenges and Issues

A Talk Given by Mr. Francis G. Estrada at the 2017 PICPA Annual National Convention at the Philippine International Convention Center (PICCC) on November 24, 2017

The Presentation

- Genesis of Good Corporate Governance Practice
- Philippine Securities and Exchange Commission in Action
- 2016 Revised Corporate Governance Code: Issues and Challenges

Financial Upheavals that brought Corporate Governance into Prominence

- Maxwell (UK)
- Bond (Australia)
- Nomura (Japan)
- Drexel Burnham/ Ivan Boesky (US)
- Carrian Investments (HK)

- Celebrated Cases: Lehman, Bear Stearns, AIG, Fannie Mae, Freddie Mac.
- The Dodd – Frank Wall Street Reform Act

1980s

**1990s –
2000s**

2008

- 1997 Asian Financial Crisis
- Accounting Fraud
(e.g. Enron, WorldCom, Satyam)

Financial Upheavals that brought Corporate Governance into Prominence

**1990s –
2000s**

- Conclusion: “Codes not enough”, hence:
- Sarbanes-Oxley Act was promulgated to restore public confidence following major accounting frauds.
- Introduced split between “rules based systems and “principles based systems” where companies comply or explain.

2008

- Some Egregious Cases: Lehman, Bear Stearns, AIG, Fannie Mae, Freddie Mac
- The Dodd – Frank Wall Street Reform Act
 - a.) Passed to prevent banks from taking too much risk.
 - b.) Provided a measure that would allow the Fed to reduce bank size for those that had become “too big to fail”.

Parallel Historical Developments



Financial crises exacerbated
(caused?) by corporate abuse
and corruption.

Benefits of Corporate Governance



Investors
Confidence



Efficiency



Growth and
Sustainability



Access to
Financing



Stronger Stakeholder
Relationships

Changing Corporate Governance

FROM

TO



Shareholder Value



Stakeholder Value



Absolute Ownership



Stewardship



Quarter-to-Quarter
Performance



Inclusive and Sustainable
Growth



Compliance



Stewardship Accountability



Reporting and
Disclosures



Increased Fiduciary Duty, Audit
and Risk Management



Corporate Reporting
Standards



Global Integrated Reporting
Standards



SEC Philippine CG Blueprint 2015

- Towards a More Effective CG Framework
 - A. Shareholders: Their Rights of Ownership
 - B. Role of Institutional Investors and Financial Advisors
 - C. Duties to Other Stakeholders
 - D. Disclosure and Transparency
 - E. Board Roles and Responsibilities
 - F. Towards a Stronger and More Effective Enforcement Regime
- Comply or Explain Approach
- Implementation Roadmap: 2020

The 2016 SEC Code of CG for PLCs*

- “Comply or explain”
- 5 Key Areas
 - A. The Board’s Governance Responsibilities
 - B. Disclosure and Transparency
 - C. Internal Control System and Risk Management Framework
 - D. Cultivating a Synergistic Relationship with Shareholders
 - E. Duties to Stakeholders
- 16 Principles
- 67 Best practice recommendations

Objectives

- To increase shareholders' protection in connection with corporate reporting
- To address the perceived overregulation by SEC
- To raise corporate governance standards of Philippine Publicly-Listed Companies to a level on par with its regional and global counterparts
- To encourage local PLCs to adopt governance practices likely to attract foreign investment.

Issues and Challenges



Disclosure of Beneficial Ownership Interests of Corporations

- a) The imperative, despite repeated reference, has long been ignored.

- b) Absence undermines enforcement of key constitutional/legal requirements (nationality restrictions, related-party transactions, anti-competition, etc.)

Issues and Challenges



Nomination Process for Independent Non- Executive Directors (INEDs)

- Process must be authentically independent; otherwise mandating participation of INEDs (e.g. Nomination, Audit, Compensation and Governance Committees) will be meaningless."

Issues and Challenges



Capital Market Development

- a) Need to spread the ownership of successful large enterprises to the middle/working class directly or indirectly;
- b) Incentives - primarily tax - for public listing must be sufficiently attractive to encourage controlling stockholders to share ownership;
- c) Learning from the examples of Malaysia, Singapore and Indonesia, strongly encourage large institutional investors to promote 'Fund' or 'Unit Trust' vehicles to enable small investors to participate in the ownership/growth of 'seasoned' blue chip shares;
- d) Arrange preferential financing for small investors to participate in the subject 'Funds' or 'Unit Trusts'".

Priorities for PLC Governance

1. Require all PLCs to disclose the ultimate beneficial ownership of their registered shareholders.
2. Ensure that the nomination, vetting and approval of INEDs is inclusive, authentically independent and objective.
3. Chairman should not be CEO.
4. Minimum of 3 or 30% of total directors should be INEDs.

Priorities for PLC Governance

5. Non-Executive Directors (Independent or Otherwise) should not hold more than 5 PLC directorships.
6. 9 Year maximum term for INEDs.
7. Chairman and majority members of the AuditCom, NomCom and Compensation Committees should be INEDs.
8. Independent, professional 'Fairness Opinion' required for all acquisitions, dispositions, corporate re- organizations or significant related-party transitions.
9. Disclosure of individual Senior Executive/Director compensation.

Desired Outcomes



Robust Implementation
and CG reforms
enforcement



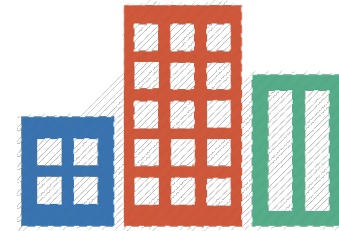
BOD to set the tone
from the top



Enhanced Shareholder
Engagement



Strengthened
Shareholder Protection



Simplify independent
audit requirements

In Summary



Is the Philippine business and government ready to 'walk the talk'?



Can the Philippines afford to fall behind its competitors/ partners in Corporate Governance?



Should companies who ***do not*** provide a satisfactory explanation for non-compliance be penalised?

THANK YOU!

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