Corporate Governance
Country Assessment

Philippines
May 2006
WHAT IS CORPORATE GOVERNANCE?

Corporate governance refers to the structures and processes for the direction and control of companies. Corporate governance concerns the relationships among the management, Board of Directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.

The *OECD Principles of Corporate Governance* provide the framework for the work of the World Bank Group in this area, identifying the key practical issues: the rights and equitable treatment of shareholders and other financial stakeholders, the role of non-financial stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.

WHY IS CORPORATE GOVERNANCE IMPORTANT?

For emerging market countries, improving corporate governance can serve a number of important public policy objectives. Good corporate governance reduces emerging market vulnerability to financial crises, reinforces property rights, reduces transaction costs and the cost of capital, and leads to capital market development. Weak corporate governance frameworks reduce investor confidence, and can discourage outside investment. Also, as pension funds continue to invest more in equity markets, good corporate governance is crucial for preserving retirement savings. Over the past several years, the importance of corporate governance has been highlighted by an increasing body of academic research.

Studies have shown that good corporate governance practices have led to significant increases in economic value added (EVA) of firms, higher productivity, and lower risk of systemic financial failures for countries.

THE CORPORATE GOVERNANCE ROSC ASSESSMENTS

Corporate governance has been adopted as one of twelve core best-practice standards by the international financial community. The World Bank is the assessor for the application of the OECD Principles of Corporate Governance. Its assessments are part of the World Bank and International Monetary Fund (IMF) program on Reports on the Observance of Standards and Codes (ROSC).

The goal of the ROSC initiative is to identify weaknesses that may contribute to a country’s economic and financial vulnerability. Each Corporate Governance ROSC assessment reviews the legal and regulatory framework, as well as practices and compliance of listed firms, and assesses the framework relative to an internationally accepted benchmark.

- Corporate governance frameworks are benchmarked against the OECD Principles of Corporate Governance.
- Country participation in the assessment process, and the publication of the final report, are voluntary.
- The assessments focus on the corporate governance of companies listed on stock exchanges. At the request of policymakers, the ROSCs can also include special policy focuses on specific sectors (for example, banks, other financial institutions, or state-owned enterprises).
- The assessments are standardized and systematic, and include policy recommendations. In response, many countries have initiated legal, regulatory and institutional corporate governance reforms.
- Assessments can be updated to measure progress over time.

By the end of June 2005, 48 assessments had been completed in 40 countries around the world.
Executive Summary

This report provides an assessment of the corporate governance framework in the Philippines—its laws and regulations, supervisory and enforcement mechanisms, and the market environment, with particular attention to the securities markets. The report is an update of the assessment that was carried out in 2001 and highlights the key issues, a summary of observance of OECD Corporate Governance Principles, and recommendations for change.

The Philippine regulators have undertaken significant reforms with a view to establish the foundations for good corporate governance. The reform process began in earnest in 2000 with the passage of the Securities Regulation Code or Republic Act. The SEC has also moved to issue a Code of Corporate Governance, required the adoption of IFRS for financial reporting, and established new requirements for the training of directors.

The legal and regulatory framework for corporate governance is now largely in place, but implementation and enforcement of this framework require further strengthening. In order for the Philippines to achieve a more transparent, accountable, and efficient corporate sector and a more robust stock market, a number of steps need to be taken, including:

- Strengthening the enforcement of the existing laws and regulations by the SEC and PSE, particularly those involving insider trading, tender offer rules, and disclosure;
- Improving the protection of minority shareholder rights through better enforcement;
- Strengthening monitoring of compliance with IAS/IFRS and requiring additional disclosure of internal controls and governance issues by listed firms;
- Enhancing Philippines Stock Exchange’s surveillance system for monitoring of unusual trading activities; and
- Encouraging the development of advocacy institutions to promote minority shareholders rights.
Acknowledgements

This assessment of corporate governance in the Philippines was conducted in May 2006 by Behdad Nowroozi of the East Asia and Pacific Region of the World Bank, as part of the Reports on Observance of Standards and Codes Program. The ROSC was based on a corporate governance template-questionnaire completed by R.S. Bernaldo & Associates. Olivier Fremond, Alex Berg, James Seward, and Arvind Gupta provided advice or/and comments. The report has been prepared under the overall guidance of Khalid Mirza and Tunc Tahsin Uyanik, Sector Managers, EASFP, and in close cooperation with the Philippines Securities and Exchange Commission.

The assessment reflects technical discussions with the Securities and Exchange Commission, the Philippines Stock Exchange, private sector firms, investment bankers, legal experts, and other stakeholders.
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Country assessment: Philippines

This ROSC assessment of corporate governance in Philippines benchmarks legal and regulatory framework and practice against the OECD Principles of Corporate Governance, and focuses on listed companies. It is an update of the assessment that was carried out in 2001.

The regulators have undertaken significant reforms with a view to institutionalizing good corporate governance in the Philippines. Reform began in 2000 with the passage of Securities Regulation Code (SRC) or Republic Act (RA) No. 8799, which superseded the Revised Securities Act of 1982. Among its important new provisions were: the institutional strengthening of the SEC, the strengthening of its prosecution and enforcement powers, the clarification of the scope of insider trading and market manipulation, protection of minority investors through the requirement of a mandatory tender offer, and delegation of certain regulatory powers to self-regulatory organizations (SROs) such as the Philippine Stock Exchange (PSE).

Furthermore, the SEC required the submission of a Manual of Corporate Governance by the covered companies, which “shall be made available for inspection by any stockholder of the corporation at reasonable hours on business days.” SEC also required covered companies to complete a self-rating form which assessed their compliance with the principles enumerated in the Code. Further, in 2005, they were required to complete a Self-Assessment Questionnaire on the observance of corporate governance principles. The Insurance Commission (IC), in 2003, also issued its own Circular Letter on Corporate Governance Principles and Leading Practices.

To promote good governance practices, a number of institutions and advocacy groups have been established, among them the Institute of Corporate Directors (ICD), the Corporate Governance Institute of the Philippines (CGIP), and the AIM-Hills Governance Center. The BSP requires the completion of an orientation seminar of prospective or current bank directors before its Monetary Board confirms their appointment as directors in their respective banks. SEC requires training of directors if requirement for such training is stated in the Corporate Governance Manuals submitted by SEC-covered companies. The ICD has initiated its scorecard for corporate governance. In 2005, it started with the listed companies. The initial effort yielded 49 listed companies, which comprised 90 percent of the PSE market capitalization.

The signing into law of the Securitization Act of 2004 in March 2004 eased the transaction costs in the capital market. This law exempts securities traded in the stock market from the documentary stamp tax (DST) for the next five (5) years. The other effect of this law is the exemption of the securities borrowing and lending transactions from the DST for an indefinite period. With lower transaction costs, trading in the capital market is expected to increase.
Adoption of IFRS is now required for listed companies, banks and other entities regulated by SEC effective January 1, 2005

One of the significant achievements toward the drive to implement corporate governance is the requirement for all companies to shift to IAS / IFRS for 2005 financial statements. Audited reports for 2005 already adopted IFRS as a mandatory requirement of SEC and BSP. In general, companies have begun their transition but a few may still be lagging behind.

Other reforms undertaken

The Anti-Money Laundering Act (AMLA) of 2001 was another reform that was enacted to establish and strengthen an anti-money laundering regime in the country. Also affecting the capital market and the practice of corporate governance is the Revised Accountancy Law, which regulates the practice of accountancy in the Philippines.

A few prospective items that will further strengthen the reforms for capital market development still await legislative approval

The PSE was granted permanent SRO status in 1999. PSE has recently submitted an amended SRO agreement to SEC to further clarify PSE / SEC roles and responsibilities and strengthen PSE SRO status. Another pending finalization is the PSE’s exposure draft of the Amended Market Regulation Rules, which provides for the empowering of the PSE’s Market Integrity Board (MIB).

There remain, moreover, a number of bills which have been pending in Congress for some time, and which would affect capital markets and the observance of good corporate governance, including the Corporate Reform Act, a proposed law patterned after the Sarbanes-Oxley Act of the U.S.A.

Liberalized foreign investment laws

Under the Foreign Investment Act of 1991 (FIA), domestic markets were opened for 100 percent foreign ownership to almost all types of business activities, except those named to be exclusive to Filipinos. These business activities where foreign ownership is restricted or unrestricted are prescribed in the Foreign Investment Negative List (FINL).

Increasing awareness of corporate governance

There is an increasing awareness of corporate governance due to the active advocacy of the BSP, SEC, PSE, IC, and ICD as well as other advocacy institutions.

Enforcement bodies are properly authorized by law and are generally able to exercise their authority

Strengthened by the recent reforms, the SEC, BSP, and IC have their powers properly covered by legislative acts, and are generally able to exercise their authority through issuance of Implementing Rules and Regulations, and Circulars. Other relevant government agencies, including the Department of Trade and Industry (DTI), the Board of Investments (BOI), and the Philippine Economic Zone Authority (PEZA), together with the SEC, enforce compliance with foreign equity rules and encourage foreign investment through tax and other incentives.

Market profile

At the end of 2005, the market capitalization of the PSE was Php 2.1 trillion (approximately USD39.8 billion), with 237 companies listed. Out of these 237 companies, only two are partially/largely owned and controlled by the Government: the Philippine National Construction Corporation (PNCC) and Philippine National Oil Company (PNOC) Exploration Corporation. Only seven new listings have been added in the last several years. There are approximately 133 brokers. The average daily turnover is approximately Php 1.6 billion (USD28.3 million), which represents an 86 percent increase from 2004 of Php 836.3 million (USD 14.9 million).

Market capitalization of the top ten companies accounts for about 79 percent of
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Total market capitalization, which indicates dominance of these firms on the market. Market capitalization (Php 2.1 trillion) as a percentage of gross domestic product (GDP) in 2005 was 40.8 percent (approximately USD39.8 billion market capitalization out of USD97.6 billion GDP), which is up from 34 percent of GDP in 2004. This is considered low compared with other countries in the East Asia Region. The market turnover ratio in Philippine pesos was 19.7 percent in 2005, and the value of traded shares to GDP was about 5 percent. These statistics are all relatively low and lag behind the larger stock markets in Asia and in developed economies.

The ownership structure is dominated by a few families and individuals

Pyramid structures are common. The largest shareholders in Philippine companies are usually members of a number of families who own shares either directly or through holding companies. Such shareholders have a dominant position within major corporations and within groups of closely related corporations. The general public is not a significant investor in the stock market.

Corporate governance institutions are largely in place, but there are still challenges in implementation

Considerable improvements in setting the corporate governance framework have been made in the last several years, but implementation and enforcement remain major challenges. The corporate governance framework still falls short of provisioning incentives for a transparent and efficient market. While most laws and regulations are in place, the enforcement regime requires further strengthening. This increases the importance of private and non-government initiatives to encourage enforcement and promote corporate governance.

Key issues

The following sections highlight the principle-by-principle assessment of Philippine compliance with the OECD Principles of Corporate Governance.

Investor protection

Protection of minority rights has been addressed in the Corporation Code (CC) and SRC through several provisions, such as tender offer rules, right to information and inspection, right to vote, appraisal right, legal process for redress, and right to bring derivative / class action suits. Intra-corporate cases involving minority shareholders are brought under the jurisdiction of the designated Regional Trial Courts (RTCs). Minority representation in the board can also be achieved through cumulative voting to uphold rights against abuses by controlling shareholders.

While minority rights are provided in the law, enforcement of these rights would entail considerable time, money and resources. The judicial system needs to be improved significantly to protect minority rights.

The CC, with the SRC and its IRR prescribes the requirements and guidelines to protect shareholder rights

The CC, with the SRC and Amended SRC Rules, sets out the requirements and guidelines for conducting an annual general meeting (AGM). The SEC Code of Corporate Governance reinforces protection of stockholder rights by providing for the right of minority stockholders to propose a meeting and the agenda for the meeting.

The CC provides that each common share is entitled to one vote. Thus, cash flow rights are closely aligned to voting rights. Voting caps are not allowed; corporations cannot limit the maximum number of votes per stockholder, regardless of the number of shares they hold.
Fundamental rights are protected, although varying rights are attached to different types of shares.

Corporations may issue different classes or series of shares, each having different rights, privileges or restrictions. Common shares always have complete voting rights. Issuance of shares with multiple voting rights and non-voting shares is prohibited.

Stockholders of a corporation may create a voting trust agreement, giving the right to vote and other rights pertaining to the shares to the trust. The CC prohibits voting trust agreements from circumventing the law. The SEC requires extensive disclosure of voting trust holders of 5 percent or more in the company’s annual report.

In law and practice, acquisition of controlling interest in a public company can only be done through a mandatory tender offer. The mandatory tender offer rule applies to takeovers or acquisition of 35 percent or more of a public company. The consideration must be the highest price paid by the bidder for the past six months. Disclosure of takeover and merger or consolidation must be promptly made to PSE. The CC governs the mergers and consolidations and the SEC is charged with enforcement of the law. To afford additional protection to investors, application for voluntary delisting is evaluated by PSE. The proposed delisting must be approved by a majority of the company’s board. The security holders must be notified prior to the petition being filed with PSE; the petition shall contain the tender offer conditions and the date they will become effective.

Under the CC, major corporate actions involving fundamental changes in the corporate structure, such as an increase / decrease of capital stock, the creation or increase of bonded indebtedness, and sale / disposition of all or substantially all corporate assets, requires approval of two-thirds of the outstanding capital stock. Contracts of the corporation with a director or officer are permitted but subject to the approval of a majority of disinterested directors and ratification by two-thirds of the outstanding stockholders.

Recent financial statements and annual reports of companies include full disclosure of the same, pursuant to the requirements in the Implementing Rules and Regulations of the SRC and Revised Disclosure Rules of the PSE. This also applies to companies with controlling shareholders.

Disclosure

In line with the development of corporate governance, SEC and PSE have enforced the policy of “Full Disclosure Approach” on matters regarding the corporations. The PSE Revised Disclosure Rules require timely, accurate, and transparent disclosures of all material matters on a regular, periodic basis, or ten (10) minutes after occurrence of an event that affects the capital market. Both financial and non-financial information is required. The development of the Online Disclosure System (Odisy) of PSE in 2003 has enabled electronic filing and data retrieval. All reports are available to the public through the PSE website.

The Implementing Rules and Regulations of SRC define the disclosure structure as required by the SEC, and adopted by the PSE. Recent annual reports of companies complying with the full disclosure policy include the following information: (1) financial and operating results of the company, (2) company
objectives, (3) major share ownership and voting rights, (4) details of remuneration of directors and key executives, (5) related-party transactions, (6) foreseeable risk factors, (7) issues regarding employees and other stakeholders, and (8) governance structures and policies. Disclosure requirements conform to OECD non-financial disclosure requirements.

Collaborative efforts of regulatory bodies to establish framework of audit oversight

One of the recent developments in corporate governance in the Philippines is the issuance of a rule on accreditation of external auditors and an increase in their reporting requirements. The oversight of the audit profession rests mainly with the BOA, in accordance with the Revised Accountancy Law of 2004. New requirements have been put in place, such as rotation of external auditors and partners. Also, external auditors are required to disclose directly to SEC any material fraud or errors that they may find during the course of the audit, if the company refuses to disclose such items.

The BSP likewise requires external auditors to disclose any material findings involving fraud or dishonesty, potential losses, and other material occurrence that may require urgent action by BSP in supervision of banks and similar institutions.

The adoption of international standards has improved the quality of financial statements and disclosures

The adoption of the PAS and PFRS has brought financial reports and disclosures more in line with the international standards. The PAS are the accounting standards adapted from the IAS. Its implementation has taken place during the past five years. Effective 2005, companies are required to comply with all standards in the preparation of their financial statements.

Ownership disclosure is covered by law, together with sanctions for non-compliance

Under the CC, all corporations are required to maintain in their principal office a stock and transfer book, which is a record of the shareholders of the corporation. Each stockholder or director can inspect the stock and transfer book at reasonable hours on business days. The SEC requires companies to submit annually a General Information Sheet (GIS) which names all the stockholders of the companies as of the last Annual General Meeting (GIS is available to the public from SEC for a small fee). Moreover, the revised SRC mandates disclosure by any person who is directly or indirectly the beneficial owner of more than 5 percent and beneficial owner of 10 percent or more of any equity security of a listed company, or by a director, officer, or stockholder thereof. The statement of Initial and Changes in beneficial ownership can be accessed through the PSE website. The issuer of such equity security is likewise required to include in the annual report disclosure of the beneficial owners. Sanctions / fines are imposed for non-observance of the disclosure rules.

Adoption of CCCS to strengthen the transparency of shareholdings up to the beneficiary level

Securities Clearing Corporation of the Philippines (SCCP) has acquired Central Clearing and Central Settlement System (CCCS), which now allows a real-time link-up with the clearing participants, such as settlement banks, PDTC, and transfer agents. The New Clearing and Settlement System commenced its work in May 2006. The adoption of CCCS is expected to facilitate the settlement and recording of ownership of securities on a registered owner or beneficiary level with the registry agencies and depository entities, to ensure protection of the investor public. The SCCP rules and operating procedures were approval by SEC in April 2006.

Company oversight and the board

In the Philippines, the structure of the board is unitary. Under the CC, unless otherwise provided in the by-laws, a corporation may create an executive
may be created

Committee appointed by the board, which may act by majority vote of the board as may be delegated in the by-laws, except with respect to approval of actions for which shareholders’ approval is also required.

Cumulative voting for the election of the board is mandatory for stock corporations

Cumulative voting is expressly provided in the Corporation Code for the election of directors of a stock corporation, without exception. In the case of non-stock corporations, cumulative voting may be permissible only when the articles of incorporation or by-laws provides for the same.

Clear new definitions of fiduciary duties for board members

The fiduciary duties of the board are clearly defined in the CC and Code of Corporate Governance. The adoption of the latter in 2002 by the SEC has brought into focus the duties of care, diligence, and loyalty of each director. Therefore, any director who commits unlawful acts or is guilty of gross negligence or bad faith, and acquires any personal interest, shall be liable jointly and severally for all damages. The business judgment rule, although not expressly provided in the CC, recognizes that corporate power and competence rest primarily with the board. Under the CC, the power vested to the directors in the management of the corporation bars judicial inquiry so long as the directors act within the scope of their authority, exercise honest judgment, and act in good faith in the furtherance of the corporation’s corporate purposes.

Audit committee is required

The SEC in its prescribed statutory Code of Corporate Governance, requires establishment of an audit committee for all regulated entities, which shall be composed of at least three (3) board members, preferably with an accounting and finance background, one (1) of whom should be an independent director with related audit experience. The SEC has also mandated that listed companies have an audit committee consisting of at least two (2) independent directors, one of whom should be the Chairman.

Board independence requirements initiated since 2000

The SRC and the Code of Corporate Governance requires covered companies, such as publicly listed companies and those with registered securities, to appoint a minimum of two (2) independent directors or 20 percent of the board, but in no case less than two. Similarly, the General Banking Law requires banks to have at least two (2) independent directors on the board. Such requirements for independent directors on the board are being complied with.

Enforcement

In order to protect the rights of the minority and to obtain an effective redress for violations of their rights, under the CC a number of private redress opportunities have been provided, such as (1) petitioning the SEC to call a meeting, (2) inspection of the books of the corporation during business hours, and (3) appraisal right. The law also provides for derivative and class actions law suits. However, derivatives and class actions are not used in practice. There is only one case of class action filed in the recent years.

Shareholders have private redress opportunities

The SEC has powers to intervene in case of oppression of minority shareholders by virtue of the powers enumerated in Sec. 5, PD No. 902-A. However, in 2000, upon the enactment of the SRC, jurisdiction over intra-corporate controversies was transferred to and vested in the regular RTCs. Later, certain RTCs were especially designated to hear such cases. Continuing training programs for judges have been conducted to enhance judicial knowledge and training in adjudication of business and commercial cases relevant to corporate governance practices and securities regulation law.
For 2004, there were 175 cases filed before the RTCs. Transfer of intra-corporate cases from SEC to designated RTCs has allowed a more thorough and careful review under the RTCs’ jurisdiction. Notwithstanding the above, the SEC has the power to do any and all acts to carry out the effective implementation of laws for which it has a mandate as the securities regulator. Annual reports issued by the SEC highlight developments and improvements in monitoring.

Legal remedies are expensive and take a long time In the Philippines, in principle, rights of the minority are given protection under the laws. However, very few aggrieved stockholders in practice exercise their rights. Seeking legal remedies is expensive and it takes a long time for a case to be decided in court. The level of administrative sanctions is also considered to be too low to deter serious wrongdoing.\(^6\)

**Recommendations**

**Legislative and regulatory changes**

**High Priority**

**Strengthen enforcement of the existing legal requirements for independent directors, including rules concerning conflict of interest.** The requirement for independent directors for companies is in place, but not effectively followed. Conflict of interest provisions concerning boards of directors have already been introduced in the CC but need to be more effectively implemented. Consider requiring approval of related party transactions by independent directors. Also, consider increasing the number of independent directors from the current requirement of “2 or 20 percent, whichever is less” to allow more independent judgments by the boards from the controlling shareholders.

**Increase free float by raising the minimum 10 percent requirement of total registered shares to offer to the public.** Thus broadening the investor market.

**Enact outstanding legislation,** such as the proposed Credit Information Act, which should mandate the credit rating of all fund-taking institutions; and the Corporate Reform Act (locally known as the Lapus Bill after its sponsor, which is a reform patterned after the U.S. Sarbanes-Oxley Act).

**Consider making it easier for shareholders to vote by allowing direct voting by mail / electronic mail.** It would be easier and less costly for shareholders who cannot attend meetings to be permitted to vote by mail or by e-mail instead of designating proxies. This would be particularly beneficial to foreign investors because it eliminates the procedure of authentication by the Philippine Consulate or Embassy and it saves time.

**Institutional Strengthening**

**High priority**

**Strengthen enforcement by SEC and PSE of laws and regulations, particularly those related to insider trading and tender offer rules.** Post information on enforcement actions on the SEC website. Consider revising the scale of penalties so that market players will have a better incentive to follow the rules. Laws and regulations on corporate governance are relatively strong in the Philippines. The SEC and PSE should concentrate on how to effectively enforce them.

**Enhance PSE’s surveillance system.** Provide additional resources for market surveillance and funding for a highly specialized system / technology to effectively monitor compliance and detect any unusual trading activities at PSE.
Enhance regulation of shareholders’ agreements. Shareholders’ agreements, specifically voting trust agreements, are submitted to the SEC for approval, but no specific rules are in place to monitor changes in the voting power of the trustee as a result of such an agreement, although disclosure is required in the annual report and information statement.

Strengthen monitoring of compliance with IAS / IFRS. Financial statements submitted by regulated companies must be reviewed by regulators to ensure that all applicable IAS / IFRS and all required disclosures have been complied with. Non-compliance should be sanctioned with appropriate penalty / fines.

Require disclosure of internal control systems and other governance matters in annual reports of listed companies. The annual report does not require disclosure of internal control systems. Other disclosures should include clear disclosure of independent directors (with their background, and whether they have a signed statement of commitment), and disclosure of the mission and vision of the company, for the benefit of shareholders and stakeholders.

Enhance protection of stakeholders. The SEC could issue a manual or code which covers the protection of stakeholders, giving proper guidelines as to their rights and the redress for violation of such rights. Whistleblower protection for company employees should be provided.

Strengthen the Code of Corporate Governance by ensuring greater independence of the board and management. Separation of the positions of the Chairman and the CEO should be encouraged to avoid conflicts of interests.

Medium priority

Require disclosure of corporate governance and voting policies by institutional investors. SEC or institutional investors should issue a guideline recommending that institutional investors disclose, on a voluntary basis, at least initially, their ownership policy with regard to exercise of their ownership rights and procedures that they put in place to ensure that the policy is implemented effectively. Such disclosure could take place via a website. In addition, the guidelines should recommend that institutional investors disclose, on an ex-post basis, their voting records. Such practice should contribute to development of shareholder activism in Philippines.

PSE to require board committees of publicly listed companies, particularly audit committees, to have formal charters. Encourage establishment of other committees (still on a voluntary basis) with clear charters.

Private sector initiatives

High priority

Implement audit oversight by the Quality Review Committee or of the Board of Accountancy. Pursuant to RA 9298, a Quality Review Committee has been created to provide oversight on the quality of audits done by external auditors and audit firms. However, this has not been implemented yet.

Encourage establishment of an association to promote minority shareholders’ rights. Efforts should be expended to establish an organization for minority shareholders to promote and protect their interests and rights. This effort could be supported by government institutions such as the Government Service Insurance System (GSIS) and Social Security System (SSS).
Summary of Observance of OECD Corporate Governance Principles

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<th>Principle</th>
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<th>NO</th>
<th>Comment</th>
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<tbody>
<tr>
<td>I. ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK</td>
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<tr>
<td>IA Overall corporate governance framework</td>
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<td>Improving corporate governance framework</td>
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<td>IB Legal framework enforceable / transparent</td>
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<td>Transparent legal framework, weak enforcement</td>
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<tr>
<td>IC Clear division of regulatory responsibilities</td>
<td>✓</td>
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<td>Clear division of responsibilities</td>
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<tr>
<td>D Regulatory authority, integrity, resources</td>
<td>✓</td>
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<td>SEC budget inadequate</td>
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<td>II. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS</td>
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<tr>
<td>IIA Basic shareholder rights</td>
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<td>Basic rights provided and observed</td>
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<td>IIB Rights to part. in fundamental decisions</td>
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<td>Fundamental decisions decided with 66% majority</td>
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<td>IIC Shareholders AGM rights</td>
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<td>Notice period two weeks</td>
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<td>IID Disproportionate control disclosure</td>
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<td>Basic disclosure required</td>
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<td>IIE Control arrangements allowed to function</td>
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<td>Mandatory bid at 35%</td>
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<td>IIF Exercise of ownership rights facilitated</td>
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<td>No requirement for disclosure of material conflict of interest by institutions investors</td>
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<td>IIG Shareholders allowed to consult each other</td>
<td>✓</td>
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<td>No obstacle to consultation</td>
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<td>III. EQUITABLE TREATMENT OF SHAREHOLDERS</td>
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<td>IIIA All shareholders should be treated equally</td>
<td>✓</td>
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<td></td>
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<td>Equitable treatment, redress possible</td>
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<td>IIIIB Prohibit insider trading</td>
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<td>Insider trading regulated</td>
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<td>IIIIC Board / Mgrs. disclose interests</td>
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<td>No requirement for disclosure of interest by directors</td>
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<td>IV. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE</td>
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<tr>
<td>IVA Legal rights of stakeholders respected</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Strict enforcement of labor code</td>
</tr>
<tr>
<td>IVB Stakeholder redress</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Stakeholders have access to legal process</td>
</tr>
<tr>
<td>IVC Performance-enhancing mechanisms</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee stock option available</td>
</tr>
<tr>
<td>IVD Stakeholder disclosure</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Stakeholders have access to public information</td>
</tr>
<tr>
<td>IVE “Whistleblower” protection</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Limited whistleblower protection</td>
</tr>
<tr>
<td>IVF Creditor rights law and enforcement</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Access to credit information weak</td>
</tr>
<tr>
<td>V. DISCLOSURE AND TRANSPARENCY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VA Disclosure standards</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Improving disclosure standards</td>
</tr>
<tr>
<td>VB Standards of accounting &amp; audit</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>IFRS now required for listed companies</td>
</tr>
<tr>
<td>VC Independent audit annually</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Improving audit quality</td>
</tr>
<tr>
<td>VD External auditors should be accountable</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Civil liabilities available for auditors</td>
</tr>
<tr>
<td>VE Fair &amp; timely dissemination</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Selective disclosure prohibited</td>
</tr>
<tr>
<td>VF Research conflicts of interests</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Rules in place, no sanctions imposed yet</td>
</tr>
<tr>
<td>VI. RESPONSIBILITIES OF THE BOARD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VIA Acts with due diligence, care</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fiduciary duties codified in law</td>
</tr>
<tr>
<td>VIB Treat all shareholders fairly</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Equal treatment required</td>
</tr>
<tr>
<td>VIC Apply high ethical standards</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No all companies have code of ethics</td>
</tr>
<tr>
<td>VID The board should fulfill certain key functions</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Code of good practices</td>
</tr>
<tr>
<td>VIE Exercise objective judgement</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Directors’ training improving</td>
</tr>
<tr>
<td>VIF Access to information</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Boards have legal access to information</td>
</tr>
</tbody>
</table>
Principle - By - Principle Review of Corporate Governance

This section assesses Philippine compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed. **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities’ ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities’ ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

**SECTION I: ENSURING THE BASIS FOR AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK**

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law, and clearly articulate the division of responsibilities among different supervisory, regulatory, and enforcement authorities.

**Principle IA:** The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity, and the incentives it creates for market participants and for the promotion of transparent and efficient markets.

**Assessment: Partially observed**

**General statement.** The legislation and circulars issued by regulatory bodies establish the market's foundation, structural framework, and supervisory framework and enforcement rules. Considerable improvements in corporate governance have been made in the last several years, but a great deal of effort will be required to promote competent, ethical, accountable, and transparent corporate governance practices in the country. The corporate governance framework still falls short of provisioning of incentives for a transparent and efficient market. While most rules and legislations are in place, the enforcement regime requires further strengthening. Going forward, the challenge is in improving enforcement, raising awareness, and creating voluntary incentives as well as regulatory incentives for following the rule of law.

**Capital markets.** The Philippines Stock Exchange (PSE) is the country’s only exchange, having undergone various stages of development. It was first established in 1927 as the Manila Stock Exchange (MSE). Under the SRC, the PSE was required to demutualize. Demutualization took place in 2003. Under the SRC, brokers are not allowed to own more than 20 percent of the PSE; however, the current ownership is more than 50 percent. In April 2006, the PSE rebranded its main index as the “PSEi”, adopting the free float market capitalization as the decisive factor in the selection of firms comprising the bellwether composite index (formerly known as “Phisix” composite index) as part of its move to place the local stock market on a par with global standards. The average free float estimate, based on the new PSEi index composed of 30 companies, is approximately 33.3 percent of the total free float; a minimum free float level was pegged at 10 percent, which listed firms must meet to qualify for inclusion or retention in the Index. The market capitalization as a percentage of GDP in 2005 was approximately 40 percent, which is at the same level of Indonesia, but lower than Thailand and Malaysia.

The number of new listings/new equity issues in 2005 was two, with a market capitalization of approximatelyPhp 30 billion, and over the period 2001-2005 were only 15, with a market capitalization of approximatelyPhp 38.7 billion. The largest new listing occurred in 2005, when Manila Water Company and SM Investment Corporation were listed. There were 10 delisting over the same period, because of violations of PSE regulations, mergers, court-decided insolvency, and expiration of the life of warrants and depository receipts, or the firm’s decision to delist. There are only four Philippine companies listed on foreign exchanges.

It is clear from these statistics that relatively few corporations raise long-term equity financing from stock exchanges, either domestically or overseas. Recent evidence suggests that only about 5 percent of firms access equity-based finance, as compared to about 15 percent from banks. However, most firms in the Philippines do not access formal financing, but use retained earnings to fund working and investment capital needs.

**Ownership framework.** The ownership of shares of the listed companies is divided among the diverse groups of investors. Foreign holdings are mostly found to be in financials, industrials, holding firms, property, and service sectors. Mining and oil were at a minimum, basically seen as due to constitutional restrictions on foreigners with respect to exploration, development, and utilization of natural resources and ownership of private lands. Retail investors generally represent the minority shareholders in all of the sectors.

For the ten largest companies, the top four shareholders were generally concentrated in the PDCT Nominee Corporation (both foreign and Filipino), foreign investors, family-owned corporations (for Ginebra San Miguel, San Miguel Corporation [SMC] held 80 percent of total shares). Ownership of the majority shares is concentrated in the hands of a few families and wealthy individuals. Pyramid structures define the holdings of the wealthy families in big corporations, where the ownership structure involves a holding company and some individual owners. Cross shareholdings are also prevalent in companies that belong to a conglomerate group of companies such as the Ayala group, SM group, and Gokongwei group. Only two state-
The largest shareholders in Philippine companies are usually members of a number of families who own shares either directly or through holding companies. Such shareholders have a predominant position within major corporations and within groups of closely related corporations. The general public is not a major investor in the stock market. The concentration of ownership is adversely related to the level of protections for minority shareholders that continue to characterize the market. However, if the corporate governance structures and regulatory framework are sound and effective, the presence of these large shareholders does offer the possibility of advantages in monitoring and control, and the generation of organizational benefits in terms of decision speed and unity of command.

Under the FIA, domestic markets were opened for 100 percent foreign ownership expect for business activities designated to be exclusive to Filipinos. These business activities where foreign ownership is restricted or unrestricted are prescribed in the FINL. Some examples of these enterprises where foreign equity is restricted are mass media (except recording) and organized or represented by a separate institution either within the listed firms or by a broader association. The funds in their possession to meet the needs of their respective members. Transparency of transactions is expected from investors are considered to be government-owned financial institutions. One of their primary purposes is to efficiently invest large shareholders does offer the possibility of advantages in monitoring and control, and the generation of organizational benefits in terms of decision speed and unity of command.

**Institutional investors.** Institutional investors and the PDCT Nominee Corporation account for a significant share of the top shareholders in listed companies, and take an active role in the governance of the listed companies. They attend AGMs. Foreign institutional investors also are active in the trading of companies in the PSE. The institutional investors are composed of private and government employees’ benefit institutions. For the private employees, the Social Security System (SSS) is in charge of welfare benefits. For the government employees, the Government Service Insurance System (GSIS) is in charge of the welfare benefits. For the Armed Forces, it is the Armed Forces of the Philippines Retirement Service and Benefit System (AFP-RSBS). The Home Development Mutual Fund (HDMF) is in charge of the housing needs for both private and government employees, although both the SSS and the GSIS also provide housing funds for their members. Philippine Health Insurance Corporation (PhilHealth) is in charge of the health services concerns. All of these institutional investors are considered to be government-owned financial institutions. One of their primary purposes is to efficiently invest the funds in their possession to meet the needs of their respective members. Transparency of transactions is expected from these institutions under law.

The impact of these investors on the stock market is still minimal compared to the impact of the influential families and individuals. There are 34 mutual funds in the market, with total assets of Php 91 billion (USD 1.7 billion), which amounts to only 4.2 percent of the market capitalization of the stock market. At present, only about 1 percent of the total population invests in the stock markets and thus, they represent small minority shareholders. Such minority shareholders are not organized or represented by a separate institution either within the listed firms or by a broader association.

**Corporate Governance institutions.** There are several Corporate governance institutions in the Philippines that promote corporate governance and good management practices. Their objectives are usually centered around corporate reforms policy on improving governance and building long-term institutional capacity, efficiency and quality participation. Since 1999, private sector institutions that have actively pursued advocacy initiatives include: (1) Institute of Corporate Directors (ICD); (2) the Capital Market Development Council (CMDC); (3) the Corporate Governance Institute of the Philippines (CGIP); (4) the Asian Institute of Management (AIM)—Hills Governance Center; (5) the Asia Business Council (ABC); (6) the Business Sector Advisory Group on Corporate Governance (BSAG); and (7) Association of Development Institutions in Asia & the Pacific (ADFIAP). These institutions have developed corporate governance scorecards, benchmarks, and training programs, however these initiatives are still in their early days and are just beginning to bear fruit.

ICD is now currently organized as a professional organization committed to the practice of corporate directorship in the Philippines in line with global principles of modern corporate governance. ICD is one of several BSP- and SEC-accredited training institutions that may provide corporate governance training seminars to directors in banks, listed companies, and others. Thus far, more than 90 people have completed its fellowship program.

**Principle IB. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent, and enforceable.**

**Assessment: Partially observed**

**Corporate legal framework.** The Corporate Code (CC) is the basic legal framework for corporate governance of Philippine corporations, listed or not. It is a compliance code, and any violation of its provisions is subject to penalty. It is supplemented by Republic Act. 8799, or the Securities Regulation Code (SRC), the Amended SRC Rules, and the Code of Corporate Governance issued in 2002 by the SEC (Circular No. 2). The SEC also issued a “Model Corporation – Manual on Corporate Governance” as a guide for listed and non-listed companies. Other applicable corporate governance initiatives include the BSP requirements for a “fit and proper” rule for bank directors, requiring them to attend orientation seminars on corporate
governance before their confirmation as board directors by the BSP Monetary Board. Likewise, the Insurance Commission (IC) had issued its IC-Circular Letter 13-2002 and the supplemental IC Circular Letter 31-2005 on Corporate Governance Principles and Leading Practices.

The framework for corporate governance is drawn from the CC, the SRC, and the Code of Corporate Governance. The SEC has jurisdiction and supervision over all corporations, partnerships, and associations / foundations that are grantees of primary franchises and / or licenses or permits issued by the government.

The Department of Trade and Industry (DTI) also provides for the needs of business and consumers and / or single proprietors, aimed at creating a business-friendly environment that promotes and facilitates the growth of investments, trade, and industry in the Philippines by promoting competition and enforcing fair trade laws.

The BSP supervises the operations of banks and exercises such regulatory powers as are provided in the New Central Bank Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions. To avoid problems of connected credits, the BSP regulates banks through DOSRI (directors, officers, stockholders, and related interests) limits, currently at 25 percent of the capital of the lending bank.

There are other bodies that regulate and / or supervise corporate institutions, such as the Insurance Commission which regulates operations of insurance companies, insurance brokers, mutual benefit associations and trusts.

Company types. Company types include stock and non-stock corporations, domestic and foreign corporations, joint ventures, partnerships and sole proprietorships. There were 237 listed companies on the PSE as of February 2006. The top 50 companies are generally considered to have better corporate governance than other listed companies.

Securities law framework. The CC and the SRC are the principal laws governing the Philippine capital market. The SRC provides the overall structural framework and rationale of the capital market including the supervisory authority of the SEC; registration of securities; regulation of pre-need plans; reporordial requirements; protection of shareholder interests; prohibitions on fraud, manipulation, and insider trading; regulation of securities market professionals; exchanges and other securities trading markets; registration, responsibilities, and oversight of SROs. The SEC, as the supervisory authority that exercises the powers and functions provided by the SRC, has issued the Code of Corporate Governance.

The CC deals with all companies at large. In addition to its provisions regarding the establishment and registration of companies with the SEC, it also provides requirements on all corporations, particularly matters relevant to protection of stockholders’ rights, duties and responsibilities of the board, corporate powers and authority, and other provisions pertaining to stocks.

The AMLA (R.A. 9160) was also enacted (thereafter amended by R.A. No. 9194) to establish and strengthen an anti-money laundering regime in the country, to ensure that the Philippines is not used as a site to launder proceeds of unlawful activities. Also affecting the framework for capital markets is the Revised Accountancy Law (R.A. 9298), which regulates the practice of accountancy in the Philippines.

Currently, there are a number of pending bills with the legislature which would affect capital markets: the Corporate Reform Act, Business Entities Recovery and Insolvency Act, Corporate Recovery and Liquidation Act, and the Proposed Credit Information Act.

Listing rules. The listing rules define and explain the policies and requirements for listing of securities, the manner in which securities are to be offered, and the maintenance requirements for continued listing. In 2004, the SEC approved the PSE Revised Listing Rules, incorporating therein the Chainlisting Rule in the Second and Small and Medium Enterprises(SME) Board Listing Rules. The minimum requirements of PSE (i.e., minimum revenue of Php 500 million) seem to be fair and economically sound, given the financial condition of the economy. There is a due process and procedures are in place for applying corporations to follow. The requirements for SME boards are reasonable and may be attainable for firms that cannot reach the first and second board listings. The existence of the second and SME board can be an alternative choice for firms planning to be listed in the stock market.

Banking Law. The General Banking Act of 2000 (R.A. 8790) and the New Central Bank Act (R.A. 7653) are the two main laws governing the financial system of the Philippines. The BSP has also issued numerous regulations pertaining to banks, including the Manual of Regulations for Banks, which contains detailed provisions on a range of corporate governance issues. The Manual includes the responsibilities, powers, and qualifications of directors, mandatory establishment of a corporate governance committee, required disclosure of corporate governance information, and areas for BSP enforcement actions on governance issues. The BSP has also published a Handbook on Corporate Governance for Banks. In addition, there are several other laws governing banks and non-bank financial intermediaries, as well as charters of special government non-bank financial institutions.

Codes. The SEC issued the Code of Corporate Governance, which is in accordance with the state policy to actively promote corporate governance reforms aimed to raise investor confidence, develop capital markets, and help achieve sustained high growth for the corporate sector and the economy. The Code is applicable to corporations whose securities are registered or listed, corporations which are grantees of permits / licenses and secondary franchise from the Commission, and public companies. It also applies to branches or subsidiaries of foreign corporations operating in the Philippines whose securities
are registered or listed. The Code primarily addresses concerns about duties and responsibilities of corporate boards in ensuring good governance. The Code also mandates protection of stockholders’ rights and of minority stockholders’ interests. The SEC is the primary regulatory body responsible for enforcing the Code of Corporate Governance. PSE adopted SEC’s Code to endorse compliance for listed companies. Implementation of the Code has contributed to improvement in the quality of corporate governance of listed companies.

In addition, the SEC has also issued the Self-Rating System for Corporate Governance (SEC Memorandum Circular No. 5, s.2003), Accreditation and Reportorial Requirements of External Auditors of Public Companies and Secondary Licensees of the Commission (Memorandum Circular No. 13, s. 2003 and Memorandum Circular No. 15, s. 2004), and Guidelines for the Nomination and Election of Independent Directors (Memorandum Circular No. 16, s. 2002). Most companies have applied the self-rating system, but there are still companies that do not comply with some of the circulars issued by SEC.

BSP has issued Circular No. 283, s. 2001 and Circular No. 296, s. 2001 to implement the BSP “Fit and Proper Rule” for board directors, in accordance with provisions of the GBA. BSP has required boards of directors of banks to attend orientation seminars on corporate governance before the Monetary Board of the BSP certifies their eligibility to hold such positions. The BSP also accredits external auditors of banks. Further, it has issued circulars that mandate compliance with Basle I and II. Also, as mentioned above, the BSP regulations for banks include extensive guidance on corporate governance matters.

The Insurance Commission has issued IC Circular Letter 13-2002, which has been subsequently amended and updated to include a self-assessment methodology under Circular Letter 31-2005, which provides corporate governance principles for insurance companies, insurance brokers, reinsurance brokers, mutual benefit associations, and trusts.

**Assessment: Partially observed**

**Securities regulator.** The SEC is the securities regulator. It has the responsibility for overall supervision of all corporations, partnerships, and associations that are the grantees of primary franchises and / or licenses or permits issued by the Government. As the securities regulator, the SEC regulates every activity relating to the securities business, including the activities of listed companies, securities offerings, broker / dealer companies, investment advisory companies, asset management companies, custodians (in case the securities company is the service provider), registrars, credit rating agencies, and associations relating to the securities business. The SEC can exercise its statutory power in the preventive manner to deal with anyone who commits violations under the CC. In the past few years, the SEC has used its power to take preventive measures in a few cases. The SEC has utilized the “show cause order” as a way of investigating suspicious activities by companies.¹⁹

**Stock exchange.** In June 1998, the SEC granted SRO status to PSE, allowing it to impose rules as well as implement penalties on erring trading participants and listed companies. Title X of the SRC details the responsibilities and oversight functions of SROs. A year after the enactment of the SRC, PSE was transformed from a non-stock, member-governed organization into a shareholder-based, revenue-earning company, which subsequently was listed. The PSE, however, despite its having been demutualized and itself a listed corporation, is still perceived to be dominated by brokers, an image it has been striving to change, through the appointment of independent directors and a more transparent election process. While SRC requires that brokers own no more than 20 percent of the exchange, the current ownership of PSE remains at approximately 49 percent.

The amended SRO agreement is currently with the SEC for approval. Issues such as the ownership of the PSE, the conflict of interests in ownership, its SRO structure, and its monitoring responsibilities are expected to be addressed in these amendments.

**Central depository.** The Philippine Depository Trust Corporation (PDTC) is a private institution established in March 1995 to provide a fast and efficient system for securities settlement, regulated by the SEC. Using a book entry system²⁰, it has created a script-less trading environment. PDTC is owned by major capital market players in the Philippines.²¹ PDTC uses the book-entry system (BES)²² to record ownership of shares of securities and to facilitate the movement of shares among its participants. As a wholly owned subsidiary of PDTC, Nominee Corporations’s sole purpose is to hold legal title to immobilized shares lodged in the system. PDCT also provides registry and clearing and settlement infrastructure services to issuers of fixed-income securities such as bonds, commercial paper, negotiable certificates of deposits, and other negotiable instruments. With the creation of a script-less trading environment, participants and market players can now reap the benefits of BES. These include minimized paperwork, reduced investment risks, increased investor confidence, and enhanced liquidity of the equities market. The PDTC uses the prevailing term for transactions, T +3. Brokers are required to transfer the stocks to the PDCT within the allotted terms of T +3.

**Banking and other regulators.** The BSP was established in 1993 pursuant to the provisions of the 1987 Philippine Constitution and the New Central Bank Act of 1993. The BSP took over from the Central Bank of Philippines, which was established in 1949, as the country’s central monetary authority. The BSP enjoys fiscal and administrative autonomy from the
National Government in the pursuit of its mandated responsibilities. It provides policy direction in the areas of money, banking, and credit. It supervises operations of banks and exercises regulatory powers over non-bank financial institutions with quasi-banking functions. Some Philippine banks are publicly listed. These publicly listed banks are also required to comply with the SEC and PSE rules and regulations, in addition to the regulations administered by the BSP. There are also a number of other laws governing banks and other financial institutions, as well as non-bank financial intermediaries, as mentioned earlier. Other market regulators that have an impact on business and the capital market are the Department of Trade and Industry and the Board of Investments. There are also a number of government-owned and controlled corporations (GOCCs) which exercise some regulatory powers and exert a financial impact on the capital market. Studies on the rationalization and privatization of some of the GOCCs are ongoing.

Company registrar. The SEC is a centralized institution that generally administers and supervises all corporate acts, including those of listed companies. It focuses on company registration, for which it keeps records of registration and other relevant documents including company's articles of incorporation, by-laws, and general information sheets (GIS), which contain information on capital stock, stockholders with their stockholdings, directors, officers, dates of meetings, and financial statements. Companies are required to notify the Commission in case there are material changes that have occurred during stockholders’ or board of directors’ meeting.

Courts. With the passage of the SRC, SEC’s jurisdiction over all cases involving corporate disputes was transferred to the designated RTCs. Title XIII of the SRC provides for the investigation, prosecution, and penalties for violations of the SRC.

Principle ID. Supervisory, regulatory, and enforcement authorities should have the authority, integrity, and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent, and fully explained.

Assessment: Partially observed

Authority, integrity, and resources of regulators. In principle, the SEC has the authority to enforce laws and regulations (It does not have the authority to initiate criminal prosecution.) It does not, however, have adequate resources, in terms of both technical expertise and number of professionals. It has independence in rule making. In taking legal enforcement, it does not require approval of the Office of the President.

The SEC was established in 1936. In 1976 the SEC was reorganized and was vested absolute jurisdiction, supervision, and controlling powers over corporations, partnerships, and associations that are the grantees of primary franchise and / or license or permit issued by the government to operate in the Philippines through Presidential Decree No. 902-A. The reorganization also placed the SEC under the administrative supervision of the Office of the President. Then, in 1980, the Corporation Code was signed into law, naming SEC as the governing body with the power to implement the Code. In 2000, the Securities Regulation Code, which fully empowered SEC, was signed.

As of May 2006, the SEC has 382 staff, which is complemented by the upgraded information technology resources. In terms of financial resources, the SEC obtains its funding from the government. The General Appropriations Act (GAA) includes the budget for the SEC. However, the law allows SEC to retain Php 100 million a year from its income to supplement the budget provided by the government. The SEC is adequately funded. Its ratio of expenditures to income for the past five years was maintained at less than 50 percent, making it one of the agencies that contribute to the National Treasury. While the Securities Regulation Code provides for the exemption of the SEC from the Salary Standardization Law and for a compensation structure comparable to the BSP, the salary level of the SEC staff is hardly comparable with that of BSP staff.

SEC is composed of a Chairperson and four (4) Commissioners, appointed by the President, for a term of seven (7) years, each of whom serve as such until their successor shall have been appointed and qualified.25 The Chairperson is the chief executive officer of the SEC. The Chairperson executes and administers the policies, decisions, orders, and resolutions approved by the Commission and shall have the general executive direction and supervision of the work and operation of the Commission and of its members, bodies, boards, offices, personnel, and all its administrative business. Under the SRC, salaries of the Chairperson and the Commission are determined by the President of the Philippines based on a classification system, at a sum comparable to the members of the Monetary Board and commensurate with the importance and responsibilities attached to the position.

The SEC has been consistently active in monitoring compliance of all companies. Its organization has been structured to effectively perform the duties and responsibilities assigned to each and every department. There are five (5) principal departments, each headed by a director. Its core function of capital markets regulation is performed by the Market Regulation Department, Corporation Finance Department, and Non-traditional Securities and Instruments Department. Its company registration and enforcement functions are performed, respectively, by the Company Registration and Monitoring Department and the Compliance and Enforcement Department.

The SEC is mainly empowered and regulated under the SRC. Its role is to curb fraud, manipulation, and excesses in the stock market, and protect the investing public from exploitation. Cognizant of the key role that SEC assumes in the national economy, the government has progressively vested it with additional powers and functions, as well as greater
responsibilities. At present, it administers and enforces 25 other laws and presidential decrees, among which are CC, Partnership Law, Investment Company Act, Financing Company Act, and FIA. In taking legal enforcement, it does not require approval of Department of Finance, but it is dependent on Department of Justice (judiciary system) to prosecute cases.

The SEC is an independent administrative agency empowered by all the laws mentioned above to perform as therein prescribed without prior approval from other departments of the government. The SEC, like any other government agency, must, however, report to a higher authority on the results of its operation; in this case, it is the Office of the President.

Courts. Courts of general jurisdiction or the designated RTC have jurisdiction over all cases involving corporate disputes. The Supreme Court has designated certain RTCs in all judicial districts to handle cases involving corporate disputes. Recent assessment of the private and financial sectors has indicated that the functioning of the judiciary is a constraint to the development of the private and financial sectors. Court efficiency and cost (though not specifically reviewed for this assessment) are considered to be weaker compared with OECD countries. One indirect way to examine court efficiency is to compare court procedures, time required, and the cost to enforce a standard contract (See Doing Business 2005 at rrw.worldbank.org.)

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Philippines</th>
<th>Regional Average</th>
<th>OECD Average</th>
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<td>Number of procedures</td>
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<td>19</td>
</tr>
<tr>
<td>Time (days)</td>
<td>300</td>
<td>406.8</td>
<td>229</td>
</tr>
<tr>
<td>Cost (% of debt)</td>
<td>50.7</td>
<td>61.7</td>
<td>10.8</td>
</tr>
</tbody>
</table>

Source: Doing Business in 2005 (World Bank)

Shareholder rights groups. Corporate governance institutions are advocates for stockholders’ rights. These groups or institutions promote and advocate the protection of rights of stockholders and protect minority stockholders’ rights. The groups in existence, however, do not appear to be having much influence in protecting shareholder’s rights, particularly those of minority shareholders.

SECTION II: THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS
The corporate governance framework should protect and facilitate the exercise of shareholders’ rights.

Principle IIA: The corporate governance framework should protect shareholders’ rights. Basic shareholders’ rights include the right to:

Assessment: Largely observed

(1) Secure methods of ownership registration

The corporate secretary records share ownership through the stock and transfer book. In order to be valid, the transfer of shares must be legally entered into the share register of the corporation. When the stock transfer is entered in the corporate books, the buyer becomes a stockholder of record, entitled to enjoy all the privileges of a stockholder. Issuers of listed securities have the option to lodge their shares with the PDTC or hold onto its stock certificates. PDTC, through BES, facilitates the electronic transfer of ownership and the settlement of securities. PCNC acts as a trustee-nominee for all shares lodged in the PDTC system. Initially, the share certificates are delivered to the appropriate stock transfer agent. Upon verification, these certificates are cancelled by the transfer agent and re-registered in the name of PDTC Nominee Corporation (PCNC). PCNC is a duly registered institution wholly owned by PDTC. Subsequent ownership and settlement of shares no longer requires physical movement of stock certificates. PCNC does not vote the shares in its name.

(2) Convey or transfer shares

Under the CC, the transfer of shares is not unreasonably restricted but may be regulated under certain conditions. Corporations may restrict the transfer of shares where a certain percentage of Filipino ownership is prescribed. Unless conferred upon the articles or by-laws, the power to impose restrictions in the transfer of shares cannot be exercised.

A corporation is granted the authority to adopt regulations as to the procedures to be followed in effecting the transfer of shares of stock. Under the CC, shares of stock of all corporations are generally transferable unless otherwise provided by law or in its articles of incorporation. Clearing takes place in DVP T+3.
The PCD uses the BES to record share ownership and settlement. All debits and credits to the investor's securities account are electronically done. Nevertheless, stock certificates may be requested from each concerned broker.

(3) Obtain relevant and material company information on a timely and regular basis

As expressly provided in the CC, the records of business transactions and minutes of meetings shall be open for inspection by the shareholder, who may demand a copy of these records or minutes, at his expense. 

9 Records of business transactions include correspondence, contracts, memoranda, journals, ledgers, financial statements, income tax returns, vouchers, receipts, contracts, and all papers pertaining to the operations of the corporation. These records also include the minute book from meetings of stockholders, boards of directors, or executive committee, and the stock and transfer book. Other books and records required by special laws such as the Public Service Act, General Banking Law, National Internal Revenue Code, Labor Code, and others must also be kept. The shareholders should have access to any and all information relating to matters for which the management is accountable, and anything that could potentially affect their interest in the corporation. Financial statements are generally prepared on a quarterly and annual basis.

(4) Participate and vote in general shareholders' meetings

Shareholders have the opportunity to participate effectively and vote in general shareholders’ meetings. The level of participation of a stockholder is in accordance with the number of shares that he/she holds, provided such stockholder has voting rights, or pursuant to the provisions of the articles of incorporation and by-laws. Shareholders are not given the chance to put items in the agenda prior to the meeting. The agenda is sent two weeks in advance of the meeting. However, during the meeting, shareholders can raise specific issues that they want to have discussed, so long as it is for legitimate purposes, during the item “Other Matters” in the agenda.

(5) Elect and remove board members

Process. Stockholders may elect, remove, or replace a director or directors during the meeting duly called for the purpose in accordance with the CC. A majority vote of the board of directors is required for the appointment of directors.

Cumulative voting / proportional representation. The CC mandates the use of cumulative voting in the election of directors of a stock corporation. In case of non-stock corporations, the rule is straight voting, and cumulative voting can be permitted only if expressly provided by the articles of incorporation or the by-laws.

Although directors may be removed with or without cause, the Code prohibits removal without cause if it will deny minority shareholders' representation on the board. Removal of directors requires an affirmative vote of two-thirds (2/3) of the outstanding capital.

The removal or replacement of a director or directors may take place either at a regular meeting of the corporation or at a special meeting called for such purpose, duly called by the secretary on order of the president, or on written demand of the stockholders representing two-thirds (2/3) of the outstanding capital stock, or in case of a non-stock corporation, by a vote of two-thirds (2/3) of the members entitled to vote. Moreover, notice of the time and place of such meeting, as well as the intention to propose such removal, must be given by publication or by written notice, as prescribed in the CC.

(6) Share in profits of the corporation

The power to declare dividends is vested with the board of directors of the stock corporation. The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings, which shall be payable in cash, in property, or in stock to all stockholders in proportion to their outstanding shareholdings. Stock dividends may be issued with the approval of stockholders representing not less than 2/3 of the outstanding capital stock, at a regular or special meeting duly called for the purpose. Preferred shares of stock issued by any corporation may be given preference in the distribution of dividends.

Dividends declaration is a corporate act which the board decides depending on the overall health of the corporation. It would be unusual for stockholders to instruct the board to change the dividends payout.

**Principle IIB. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:**

**Assessment: Largely observed**
Amendments to statutes, or articles of incorporation or similar governing company documents

Amendments to the corporation’s articles of incorporation and by-laws require a majority vote of the board of directors, and at least a simple majority (51 percent) of the outstanding capital stock, at a regular or special meeting duly called for that purpose. (As a rule, corporate acts generally require just a simple majority vote unless the Corporation Code requires a higher majority.) Such amendments shall be attached to the original articles and by-laws in the office of the corporation, and a copy thereof, duly certified under oath by the corporate secretary and a majority of directors, shall be filed with the SEC, and a copy attached to the original articles of incorporation and original by-laws.

The amendment of new articles of incorporation and by-laws shall only be effective upon the issuance by the SEC of a certification that they are not inconsistent with the CC.

Authorization of additional shares

Issuing share capital. Any increase or decrease in capital stock may be approved by a majority vote of the board of directors and, at a stockholder’s meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock.

Pre-emptive rights. All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto. 27

Extraordinary transactions, including sales of major corporate assets

Sales of major corporate assets. Sale of all or substantially all of the corporate assets requires approval by a majority vote of board of directors, when such sale is authorized by the vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock. 28 Other major transactions, such as amendment of the articles to extend or shorten the corporate term, 29 or investing funds in another corporation or business or for any other purpose, 30 must be approved by a majority vote of the board and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock. Transactions such as increasing or decreasing capital stock and incurring, creating, or increasing bonded indebtedness 31 require approval by a majority vote of the board and two thirds (2/3) vote of the outstanding capital stock. Such transactions shall also be disclosed to the PSE, and should also be disclosed in the financial statements.

Principle IIC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings,

Assessment: Partially observed

(1) Sufficient and timely information on date, location, agenda, and issues to be decided at the general meeting

Meeting deadline. The board, or any officer of the company so authorized, is to call an annual general meeting on a date fixed in the by-laws, or if no date is fixed, on any day in April. 32 If not, the SEC, upon petition by a stockholder and with good cause, may issue an order authorizing the petitioning stockholder to call a meeting by giving proper notices as required. 33

Meeting notice. Under the CC, the notice should be sent at least two (2) weeks prior to the meeting, unless a different date is fixed in the by-laws. This short notice period may not be adequate for the stockholders to plan attendance. International good practice suggests four (4) weeks. In the case of foreign investors, two weeks is not sufficient time if a proxy needs to be executed, because a proxy executed abroad has to be authenticated by the Philippine Embassy or Consular Office and this may take additional time.

Available information. The notice must contain information on the date, time, place, and the agenda of the meeting. It also contains other information as required by the SEC in the Information Statement (SEC Form 20-IS). It includes the dissenter’s right of appraisal with respect to any matters to be acted upon, the number of shares outstanding and the number of votes to which they are entitled, and information on directors and executives. In practice, a preliminary copy of this form is given to the SEC for approval before distribution to the stockholders.

Quorum rules. Unless otherwise provided by the CC or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock. For closed corporations, the articles of incorporation may provide for a larger quorum or other voting requirements than those provided in the CC.

(2) Opportunity to ask the

Forcing items onto the agenda. Shareholders cannot force items to be included in the
board questions at the general meeting

| Agenda prior to the AGM. Issues that any stockholder may want to discuss in the meeting, other than those within the agenda, may be raised during the meeting after all the original agenda items have been covered, so long as these are issues with 'legitimate purposes.' In practice, such issues are raised during the ‘Other matters’ part of the meeting. **Questions.** As long as their questions are related to the business or matters as stated in the agenda, stockholders may freely ask questions during the meeting. |

(3) Effective shareholder participation in key governance decisions, including board and key executive remuneration policy

| The CC requires the consent of shareholders on major corporate decisions, including board and key executive remuneration. In practice, those who actively attend AGMs are only those with substantial or majority ownership. |

(4) Ability to vote either in person or in absentia

| **Proxy regulations.** Under the CC, a shareholder may vote either directly or through a representative (a) by means of proxy; (b) by a trustee under a voting trust agreement; or (c) by executors, administrators, receivers, or other legal representatives duly appointed by the court. There is no specific requirement as to the form of proxies unless the by-laws of the corporation so provides, except that the proxy should be in writing and signed by the shareholder, with the original copy filed on or before the scheduled meeting with the corporate secretary for verification. Electronic submission of proxy is not practiced although, SEC Memorandum Circular No. 4, s. 2004 acknowledges that the submission of proxies by electronic mail is in line with the E-Commerce Act (R.A. 8792). Corporations and other persons soliciting proxies must comply with the form included in the Information Statement (SEC Form 20-IS), and relevant regulations prescribed by the SEC. **Postal and electronic voting.** Voting by mail or post is not permitted; it must be in person or through a proxy, as described above. |

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

**Assessment: Partially observed**

**Classes of shares.** Typically, corporations issue common shares and preferred shares which may have such rights, privileges, or restrictions as may be provided in the articles of incorporation. Preferred shares may be entitled to vote on certain matters as provided in the CC. It is the policy that one share is entitled to one vote. Companies may issue founders' shares for a limited period not to exceed five (5) years, subject to the approval of SEC. Founders' shares are shares issued to the organizers and promoters of the corporation which may be given certain rights or privileges as to voting and the division of profits. Voting caps are not allowed in the Philippines. Corporations may also issue non-voting shares. Unless otherwise provided in the CC, no share may be deprived of voting rights except those classified as preferred and redeemable shares. Pyramid structures and cross-shareholding are common in the Philippines. There has been no legislation passed to dismantle pyramid structures. The CC expressly allows a subscriber or a shareholder in a corporation to be a shareholder of another corporation. There are a number of safeguards in place to make these relationships transparent. First, separate financial statements and consolidated financial statements are required by the SEC. Directors of banks, insurance companies, and other regulated companies are required to disclose their shareholdings in the companies and related interests in the companies of which they are shareholders. Each director must provide this information annually to BSP and IC. Pyramid structures, as opposed to horizontal structures, have distinct advantages in terms of taxation because inter-corporate dividends are not taxable, while dividends received by individuals are subject to a tax of 10 percent.

**Ownership disclosure by companies.** Shareholdings are disclosed in the annual and quarterly reports, as required by the SEC for public corporations. All corporations are required to submit a GIS (General Information Sheet) which discloses the amount of ownership of each director / stockholder. The GIS is required to be prepared and submitted by all corporations thirty (30) days after the annual general meeting. Listed corporations are required to file an Annual List of Stockholders and Top 100 Stockholders to the SEC and PSE within five (5) calendar days after the AGM and within fifteen (15) calendar days after the end of each quarter, respectively.

The SEC monitors ownership disclosures by monitoring compliance with the reports submitted by directors, officers, substantial beneficial owners, as well as by the issuers of securities to the public. The SEC also monitors ownership disclosure through monitoring of the submission of GIS. In fact, when a corporation fails to submit the GIS within the time required, the SEC issues a show-cause order to the erring corporation to explain the reason for violation.

**Ownership disclosure by shareholders.** Any person who acquires beneficial ownership of more than five (5) percent...
directly or ten (10) percent indirectly, or who is a director, officer, or principal stockholder of an issuer of securities, should disclose and submit a statement of beneficial ownership to the SEC and the PSE. The Statement of Changes of Beneficial Ownership shall be promptly disclosed to the PSE. Currently, Ayala Land, Inc. has expanded its coverage of these reporting requirements by including the members of its Management Committee. Disclosure of ownership by shareholders and companies is monitored by the SEC. Non-compliance is subject to inquiry by the SEC. The SEC has reported that 43 companies in 2003, 19 companies in 2004, and 16 companies in 2005 were penalized for non-compliance.

**Disclosure of shareholder agreements.** Disclosure of shareholder’s agreements is required in the annual reports and information statements.

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

**Assessment:** Partially observed

### (1) Transparent and fair rules and procedures governing acquisition of corporate control

**Basic description of market for corporate control.** In practice, acquisition of a controlling interest in a public company can only be done through a mandatory tender offer. Two (2) days prior to the date of commencement of the tender offer, SEC Form 19-1, including all the exhibits thereto, shall be filed with the SEC and PSE and furnished to security holders of the target company. On the date of the commencement of the tender offer, the same form and exhibits shall be published in two (2) newspapers of general circulation, and for two (2) consecutive days thereafter, and must contain information on the identity of the bidder and the target company, type of securities and consideration offered, expiration date, and other pertinent information. Mergers or consolidations require prompt disclosure to PSE (Revised Disclosure Rules) and approval by SEC. The same is also disclosed in the audited financial statements of the company.

**Tender rules / mandatory bid rules.** The SEC mandatory tender offer rule requires a person who intends to acquire thirty-five (35) percent or more of shares in a public company, or intends to acquire thirty-five (35) percent or more of shares in one or more transactions within a period of twelve (12) months, or any acquisition of less than thirty-five (35) percent but would result in ownership of fifty-one (51) percent of the total outstanding shares, to make a tender offer. In a mandatory offer, the consideration must be the highest price paid by the bidder for the past six months. Where the offer involves payment by transfer or allotment of securities, such securities must be valued on an equitable basis. The exit price corresponds to the actual tender offer price or consideration which the bidder is willing to pay the security holders.

**Delisting / going private.** Under the PSE Revised Listing Rules, there are twelve (12) grounds for delisting. An issuer may be suspended or delisted if the criteria provided are met. PSE duly notifies the concerned company, which is entitled to a hearing to contest the recommendation / decision of PSE. A company that was once delisted cannot apply for relisting within a period of five (5) years from the time it was delisted. Directors and officers are disqualified from becoming directors of any company applying for listing within the same period.

Voluntary application for delisting of an issuer is allowed. The order of delisting shall be thoroughly evaluated by PSE to ensure that the interests of the investors will not be prejudiced. The issuer is required to pay the annual listing maintenance fee to PSE for the year when the application for delisting was filed. In the event that an issuer seeks the listing of a security that was once delisted, it will be treated as a new listing.

**Squeeze-out provisions.** There is no law or regulation that regulates squeeze-out provisions. The outstanding shareholders can be squeezed out by a 75 percent super majority.

**Abuse of buy-backs / treasury shares.** The CC expressly authorizes a corporation to purchase its own shares, provided that the acquisition is for a legitimate purpose and that there shall be unrestricted retained earnings to cover shares: i) to be purchased or acquired to eliminate fractional shares arising out of stock dividends; ii) to collect or compromise an indebtedness to the corporation, arising out of unpaid subscription; in a delinquency sale, and to purchase delinquent shares sold during said sale; and iii) to pay dissenting or withdrawing stockholders entitled to payment for their shares.

### (2) Anti-take-over devices

Hostile takeovers are nearly unheard of in the Philippines, but friendly mergers and takeovers are not uncommon. The CC governs the mergers and consolidations, and the
SEC is in charge of enforcing the law. Strict disclosure rules make hostile takeovers difficult. Occasionally, deliberate proxy solicitation and accumulation from sufficient shareholders is done before a shareholders’ meeting by persons who want to get elected to the board. If takeover is seen as synonymous with majority ownership, the tender offer rules will make it difficult to stage a surprise. Poison pills, golden parachutes, and other anti-takeover devices are not common.

**Principle IIF: The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.**

**Assessment: Materially not observed**

<table>
<thead>
<tr>
<th>(1) Disclosure of corporate governance and voting policies by institutional investors</th>
<th>General obligations to vote / disclosure of voting policy. There are no rules on how institutional investors vote or disclose their voting policy. They have their own charters with respect to voting policies, but these do not have to be disclosed. Special rules for institutional investors / pension funds. There are no specific rules for institutional investors. They are treated like other stockholders in the company. Blocked shares / record date. Shares are not blocked from trading before and during the AGM. The record date is used only to establish the list of stockholders entitled to notice and to vote.</th>
</tr>
</thead>
</table>

| (2) Disclosure of management of material conflicts of interest by institutional investors | There is no specific provision requiring the disclosure of management of material conflicts of interest by institutional investors. SRC requires disclosure for brokers and traders regarding conflicts of interests with customers. In addition, the SRC also provides disclosure requirements regarding business operations, boards of directors, and related-party transactions. |

**Principle IIG: Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.**

**Assessment: Largely observed**

**Rules on shareholder cooperation in board nomination/election.** There are no rules specified in the law preventing discussion, cooperation, and communications among shareholders. Institutional investors and other organizations do not currently provide forums to facilitate cooperation among groups of shareholders. Under the CC, at all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. Institutional investors can put forth their candidates for election.

In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election, and the stockholder may vote such number of shares for as many persons as there are directors to be elected. He may cumulate these shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit. Institutional investors have the same or equal voting rights as an individual stockholder and can put forth their candidates for election if they have enough shareholdings to be able to do so.

**Rules on communication among minority shareholders.** There are no specific rules on the communication among minority stockholders.

**Proxy solicitation or other formalities required.** Under the CC, stockholders or members are allowed to vote by proxy in meetings, provided that it shall be in writing, signed, and duly filed before the scheduled meeting with the corporate secretary. Unless otherwise provided, it shall be valid only for the intended meeting. No proxy shall be valid for more than five (5) years at one time.

In addition, SEC has set out rules for proxy solicitations under Section 20 of the SRC. Disclosures regarding such solicitations and notification of stockholders who are entitled to vote, and their authorization, should be filled out in proxy statements and information statements respectively, as required by the SEC. Furthermore, SEC has implemented voting by mail, and the one-share-one vote policy was adopted by the CC.

**Rules on communication among institutional investors.** There are no specific rules on the communication among institutional investors.
SECTION III: THE EQUITABLE TREATMENT OF SHAREHOLDERS

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.

Principle IIIA: All shareholders of the same series of a class should be treated equally.

Assessment: Partially observed

| (1) Equality, fairness, and disclosure of rights within and among share classes | Availability of share class information. The interest, rights, participation in dividends, and restrictions of class of shares are embodied in the articles of incorporation. If listed, classes of shares offered to the public may be viewed on the PSE website or in the PSE weekly and monthly report. |
| Equal rights within classes. Under the CC, each share shall be equal in all respects to every other share, except as otherwise provided in the articles of incorporation and stated in the certificate of stock. |
| Approval by the negatively impacted classes of changes in voting rights. In the absence of any express provision in the articles of incorporation, preferred shares are not convertible into common shares. Preferred shares have the same voting rights as common shares unless otherwise stipulated in the articles of incorporation. Where the articles of incorporation provide for non-voting shares in the cases allowed by the CC, the holders of such shares shall nevertheless be entitled to vote on the following matters: (1) amendment of the articles of incorporation; (2) adoption and amendment of by-laws; (3) sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all of the corporate property; (4) incurring, creating, or increasing bonded indebtedness; (5) increase or decrease of capital stock; (6) merger or consolidation of the corporation with another corporation or other corporations; (7) investment of corporate funds in another corporation or business in accordance with this Code; and (8) dissolution of the corporation. |

In cases other than those mentioned above, negatively impacted non-voting shareholders need no approval. The CC allows non-voting shareholders to vote only in the above instances, which are considered major transactions of a corporation.

| (2) Minority protection from controlling shareholder abuse; minority redress | Ability to call meeting. Under the CC, the president shall preside at all meetings of the directors or trustee as well as of the stockholders or members, unless the by-laws provide otherwise. Under the CC, when there is no person authorized to call a meeting and the reason for the meeting is of good cause, the SEC may issue an order to the petitioning stockholder or member directing him to call a meeting by giving proper notice, as required by the SEC. The law does not specifically establish a threshold percentage to call an AGM; even a single stockholder can call a meeting provided his petition is approved. On the other hand, a special meeting particularly for the purpose of removal of a director or trustee may be called on a written demand of the stockholders representing or holding at least a majority of the outstanding capital stock, or, if it be a non-stock corporation, on the written demand of a majority of the members entitled to vote. |
| Withdrawal rights. In the Philippines, withdrawal rights are the same as appraisal rights. |
| Ability to inspect books. Under the CC, the corporate books and records, including minutes of meetings, shall be open for inspection to any stockholder or member of the corporation. Such a corporation shall furnish its most recent financial statements within ten (10) days upon receipt of a written request from any stockholder or member. Minority shareholders have access to any and all information relating to matters for which the management is accountable, and anything that could potentially affect their interest in the corporation. |
| Appraisal rights. A shareholder, as a rule, cannot withdraw from the corporation. However, under the CC, any stockholder has the right to dissent and exercise his appraisal right against the corporation, upon written demand, for payment of the fair value of his shares in certain instances. Instances where this may occur include: (1) extending or shortening the corporate term; (2) investing its funds in another corporation or on business outside of its primary purpose; (3) amending the articles of incorporation in a manner that changes or restricts the rights of any stockholder or class of shares, or authorizes |
preferences in any respect superior to those of outstanding shares of any class; (4) in case of sale, lease, exchange, transfer, mortgage, pledge, or other disposition of all or substantially all of the corporate property and assets; and (5) in case of merger or consolidation. This right can be exercised provided that the stockholder can offer his/her shares for sale to the corporation (i.e., only if there is enough surplus).

Under the CC, any stockholder shall have the right to dissent and exercise his appraisal right in certain cases where he has voted against a proposed corporate act. Such right shall be exercised upon written demand against the corporation, for payment of the fair value of his/her shares.

**Ability to challenge shareholders resolution.** Minority shareholders may institute a class suit or derivative suit.

**Power to postpone an AGM.** Postponement can be done only by the corporation itself and not by the stockholders. Postponement may be allowed for justifiable and valid reasons, provided that the meeting is held within a reasonable time by notifying the stockholders of record and the SEC in writing, with the statement signed under oath by the president or secretary of the corporation.

**Regulatory redress.** The SRC has transferred the jurisdiction over intra-corporate cases from SEC to the RTC. The cases covered by the court are mostly controversies between and among corporations and individuals involved in fraud or misrepresentation, or controversies arising from election or appointment of directors and other relevant parties, derivative suits, and inspection of corporate books.

The SEC has the power to intervene in cases of oppression of minority shareholders. Such cases are not reported separately by the SEC, but rather as part of the aggregate perspective concerning issues of violations and cases of registered entities.

As of 2004, SEC has collected a total of Php 96 million in fines and penalties. The SEC also monitored 50,790 inactive corporations, revoked 28,656 certificates of incorporation, penalized 5,997 corporations and issued cause orders to 384 branch offices of foreign corporations for failure to comply with its reportorial requirements.

The SEC also had conducted 37 investigations, issued cease and desist orders against three corporations, revoked the certificates of registration of seven corporations, and filed a criminal complaint against the officers of one corporation. SEC also penalized 98 listed / registered issuers of securities, ten (10) mutual fund companies, nine (9) public companies, twenty-six (26) financing companies, and twenty-four (24) other market participants for infractions of laws, rules, and regulations administered by SEC.

For the year 2005, PSE has collected a total of Php 6.28 million in trading and listing-related fines and penalties such as late payment, late submission of requirements, non-compliance, and non-disclosure by listed companies.

**Ability to sue directors.** A stockholder may sue corporate directors for breach of trust, mismanagement, waste, or dissipation of corporate assets on behalf of him/herself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders. There is no percentage requirement for a stockholder to file a suit against the director, as long as he/she complies with all the requirements to bring such suits in court.

In practice, criminal charges against directors and officers of certain corporations have been filed with the Department of Justice and the prosecutor's office through the SEC on account of fraud, stock manipulation, broker-director rule violation, non-disclosure of beneficial ownership, and other infractions.

<table>
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<tr>
<th>Preference</th>
<th>Description</th>
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<tbody>
<tr>
<td>(3) Custodian voting by instruction from beneficial owners</td>
<td>The beneficial owners may execute proxies in favor of the custodian. Under the SRC, financial institutions exercising fiduciary powers in a nominee's name can send proxy materials and information statements to the beneficial owner of securities, upon inquiry of the registrant company, prior to the scheduled meeting.</td>
</tr>
<tr>
<td>(4) Obstacles to cross-border voting should be eliminated</td>
<td>Proxies executed abroad are required to be authenticated before the Philippine Consular Office in the country of the shareholder.</td>
</tr>
<tr>
<td>(5) Equitable treatment of all</td>
<td>A stockholder of record who is entitled to vote has a right to participate and vote in any meeting of the stockholders of the corporation. The general rule is that one share is</td>
</tr>
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</table>
shareholders at AGMs equivalent to one vote. There are no significant costs to voting. Neither the management nor the controlling shareholders make it difficult for minority shareholders to vote at meetings.

### Principle IIIB: Insider trading and abusive self-dealing should be prohibited.

**Assessment: Partially observed**

**Basic insider trading rules.** SRC provides for prohibitions regarding the manipulation of security prices, devices and practices, regulation of option trading, and fraudulent transactions. No brokers or dealers shall deal in or otherwise buy or sell or effect any transaction in securities, or induce or attempt to induce the purchase or sale of any security for its own account or for the account of customers, securities listed on PSE issued by any corporation where any stockholders, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil degree of consanguinity or affinity, is at the same time holding office in said issuer corporation as a director, president, vice president, manager, treasurer, comptroller, secretary, or any office of trust and responsibility, or is a controlling shareholder of the issuer.  

**Insider trading disclosure.** SRC provides for the duties of insiders to disclose when trading. The PSE system has set parameters to track an unusual increase or decrease in stock prices of an issuer. When these activities occur, it receives an electronic alert. However, this does not necessarily mean that there is a violation; it only suggests possible insider trading. PSE is now prompted to verify such information through newspapers, information from third parties, brokers, or dealers. If the issuer is unable to determine such unusual trading activity, it must make a disclosure to PSE to the effect that there is no undisclosed information that would account for the unusual trading activity. PSE may report to the SEC any issuers who violate basic insider trading rules. Then SEC may conduct appropriate investigation to penalize offenders.

**Criminal / civil / administrative penalties.** Penalties for the violations of any of the provisions of the SRC are found in Chapter XIII, Section 73. SEC, in its Memorandum Circular No. 6, series 2005 provides for administrative penalties for brokers / dealers and associated persons who practice insider trading. They are subject to civil and criminal liability and held liable to pay damages in an amount not exceeding triple the amount of the transaction plus actual damages to the defrauded investor. The price manipulation of the shares of BW Resources in 1999 was probably the most publicized insider trading case in the Philippines. BW Resources shares shot up to as high as Php 107 a share. However, in the weeks that followed, the value of BW Resources shares suddenly plummeted to as low as Php 27 a share. Investigations by the SEC and PSE uncovered heavy buying and stock price manipulation by Dante Tan and several brokers / dealers that left many investors with heavy losses. The brokers and dealers that were involved paid the penalties imposed by SEC. The case is pending before the Court of Appeals.

### Principle IIIC: Members of the board and key executives should be required to disclose to the board whether they directly, indirectly, or on behalf of third parties have a material interest in any transaction or matter directly affecting the corporation.

**Assessment: Partially observed**

**Related-party transaction disclosure rules.** There are no provisions in the laws or regulations of the SEC or the PSE mandating the disclosure by the director or the officer himself / herself of his / her material interest in any transaction with the corporation. It is the responsibility of the corporation to disclose such information in the financial statement and annual reports. The Philippines has adopted the use of PAS 24, based on IAS 24, which sets the rules on the disclosure of related-party transactions effective for the annual periods beginning on or after year 2005.

**Related-party transaction approval rules / rules for approval of board / AGM.** While no rules exist that discuss disclosure by directors themselves, it is an underlying part of the fiduciary duties of a company director to safeguard the interest of the corporation over his / her own interest. These duties and functions are found in the CC and the Code of Corporate Governance. The CC provides for what should be done in the case of violations under Section 31. Corporation contracts with a director or officer are valid if all the conditions in Section 32 of the CC are present. In certain cases, if some but not all conditions are met, the contract is voidable by the approval of two-thirds of the stockholders.

**Conflicts of interest rules and use of business opportunities.** Generally, directors are prohibited, by virtue of their office, from acquiring for themselves business opportunities which should belong to the corporation. When this occurs, the CC requires that the director must account to the corporation for all profits obtained from the transaction, and refund these profits to the corporation unless his /her actions have been ratified by a vote of the stockholders owning at least two-thirds of the outstanding capital stock.
SECTION IV: THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements, and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle IVA: The rights of stakeholders that are established by law or through mutual agreements are to be respected.

Assessment: Largely observed

List of relevant codes for stakeholders. The corporate governance framework of the Philippines is focused to a large extent on promoting the rights of stockholders, and the duties and responsibilities of the board in the management of the corporate affairs. The CC mainly regulates stockholders’ rights, board duties and responsibilities, and corporate power concerns. At the same time, several sets of legislation address the concerns of stakeholders, including employees, debtors, and creditors. Employees are protected under the Labor Code of the Philippines, and the Code is strictly enforced. The debtor-creditor relationship is also regulated under the Civil Code and other corporate rehabilitation and insolvency laws. In addition, the government mandates that companies should obtain a sanitation permit to ensure that the business of the company will not negatively affect the environment.

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

Assessment: Partially observed

Redress mechanisms available to stakeholders. The redress mechanisms available to stakeholders include grievance provisions under the Labor Code for employees on all labor disputes including unfair labor practices; bargaining deadlocks and strikes; applicable tax laws for tax cases; insolvency laws for creditor-debtor relationships, including filing of voluntary insolvency; rehabilitation and suspension of payments through the regional trial courts; filing cases in courts or SEC, as the case may be; the right to demand dissolution by stockholders; and others.

Principle IVC. Performance-enhancing mechanisms for employee participation should be permitted to develop.

Assessment: Partially observed

Rules on employee stock option plans. It is the discretion of the management of the company whether or not to have employee stock option plans. There is no specific rule in the Philippines mandating companies to provide employee stock options. However, under Executive Order 226, when feasible and considered desirable by the board, registered enterprises are required to list their shares of stock on any accredited stock exchange or directly offer a portion of their capital stock to the public and/or their employees.

Principle IVD: Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient, and reliable information on a timely and regular basis.

Assessment: Partially observed

The current legal framework does not support direct stakeholder participation in the corporate governance of the company. However, the law allows any person, whether stockholder or not, to have access to the registered information filed with the SEC and PSE, including financial statements. In addition, disclosures required to be made by listed companies can be accessed on a timely and regular basis on the PSE website.

Annual report discloses economic and financial prospects. The annual report of the company contains information on the economic and financial prospects of the company.

Annual report discloses significant facts on employees. The annual report of the company contains general information and the total number of employees; however, there is no provision mandating the filing of employee information.

Information is timely and regular. Economic and financial information on the company are filed quarterly and annually.

Principle IVE: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board, and their rights should not be compromised for doing so.

Assessment: Materially not observed

Whistleblower rules. There is no specific rule on protection of whistleblowers; however, draft legislation on whistleblower
Protection is currently under preparation. The law generally protects any person who has witnessed or has knowledge or information on the commission of a crime, and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority.  

**Principle IVF:** The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

**Assessment:** Materiaally not observed

**Effectiveness of bankruptcy, security / collateral, and debt collection / enforcement codes.** In case of bankruptcy in the Philippines, there are two principal laws available to a corporation seeking debt relief. These are the Insolvency Law and Presidential Decree 902-A. To get such relief, a company has to go through debt restructuring or suspension of payments or file for voluntary insolvency or for rehabilitation. Creditors may also initiate involuntary insolvency proceedings. The Insolvency Law deals with three principal subjects, namely, suspension of payments, voluntary insololvency, and involuntary insololvency. In accordance with the provisions of the Insolvency Law, “every insolvent debtor may be permitted to suspend payments or be discharged from his debts and liabilities.” Corporate debtors, however, are not given a discharge. The venue for all proceedings under the Insolvency Law since its enactment in 1999 has been vested exclusively in the regular courts.

In 1981, a Presidential Decree was issued (PD No. 1758, amending P.D. 902-A), which vested in the SEC, the administrative agency charged with implementing the laws affecting corporations and partnerships, jurisdiction over petitions for suspension of payments. In addition, the SEC was vested with the power to appoint, upon petition or motu proprio, a rehabilitation receiver, or a management committee for partnerships, corporations, and associations in distress, upon the appointment of which all actions for claims against the partnerships, corporations, or associations would be suspended. The SEC was further granted authority to evaluate the feasibility of continuing operations and of restructuring and rehabilitating such entities. When the SRC was approved and implemented, the jurisdiction over cases was transferred from the SEC to specialized RTCs. The rules and guidelines for rehabilitation were promulgated by the Supreme Court under A.M. No. 00-8-10-SC, otherwise known as the Interim Rules of procedures on Corporate Rehabilitation. These rules are less cumbersome than the procedures followed by the SEC pursuant to P.D 902-A, and are different from the Interim Rules of Procedures Governing Intra-Corporate Controversies.

**Effectiveness of bankruptcy, security / collateral, and debt collection / enforcement codes.** Creditors rights (though not specifically reviewed for this assessment) are considered to be low compared to regional and international benchmarks. A variety of standard measures developed by the World Bank for 130 countries compare the Philippines to its regional neighbors and OECD averages. In these comparisons, legal rights are weaker than in other countries in the region. Access to credit information, credit registry, and coverage of credit registries are also considerably weaker. See Doing Business 2005 at ru.worldbank.org.

<table>
<thead>
<tr>
<th>Creditor Rights Indicator</th>
<th>Philippines</th>
<th>Regional Average</th>
<th>OECD Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost to create collateral (% of income per capita)</td>
<td>8.3</td>
<td>3.0</td>
<td>5.2</td>
</tr>
<tr>
<td>Legal Rights Index (out of a possible 10)</td>
<td>3</td>
<td>5.2</td>
<td>6.3</td>
</tr>
<tr>
<td>Credit Information Index</td>
<td>2</td>
<td>1.8</td>
<td>5.0</td>
</tr>
<tr>
<td>Public credit registry coverage (borrowers per 1000 adults)</td>
<td>0</td>
<td>17</td>
<td>76.2</td>
</tr>
<tr>
<td>Private bureau coverage (borrowers per 1000 adults)</td>
<td>37</td>
<td>96</td>
<td>577.2</td>
</tr>
</tbody>
</table>

**SECTION V: DISCLOSURE AND TRANSPARENCY**

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 governance of the company.

**Principle VA:** Disclosure should include, but not be limited to, material information on:

**Assessment:** Partially observed

1. Financial and operating results of the company

   **Annual and quarterly reports.** Under the CC and SRC, every corporation is required to submit financial statements, audited by an external auditor, to the SEC within the time prescribed. For listed companies, the audited financial statements are filed with the SEC as an integral part of the annual report and the management report attached to the information statement distributed to the stockholders prior to the AGM. Financial statements accompanying quarterly reports of listed companies need not be audited,
except in case of initial public offerings (IPOs) of securities. Listed companies should also submit another copy of these reports to the PSE in electronic form. Approval by the stockholders of the financial statement is not necessary. In the case of banks, the financial statements are required to be published by the central bank, BSP.

Effective upon the amendment of Rule 68 of the Amended SRC Rules in 2005, all financial statements filed shall be certified by the chairman of the board. Another significant change is the regulation concerning accreditation by the SEC of these external auditors and auditing firms.

Also, listed companies are required by SEC and PSE to make timely disclosures on information that may have a material effect on the company. If the event occurred during trading hours, the company should request an immediate halt. On the same day, the information is simultaneously released to market participants online. Non-compliance with the disclosure rules shall be subject to regulatory sanctions by the PSE and SEC.

This information is available to the public through the Online Disclosure System (Odisy) of the PSE.

(2) Company objectives
Company objectives are primarily found in the articles of incorporation of every corporation approved by the SEC. Listed companies discuss in the annual and quarterly reports to the SEC and PSE, in the management’s discussion and analysis section, the company’s plan of operation for the next twelve (12) months, and the preceding year’s evaluation of financial results. These are available to the stockholders on the PSE website.

(3) Major share ownership and voting rights
All corporations registered under the CC should maintain in their principal office a stock and transfer book which is a record of the shareholders of the corporation. Annually corporations are required by the SEC to submit a general information statement that names all the stockholders of the company as of the last annual general meeting. Also, the revised SRC regulation mandates disclosure by any person who is the beneficial owner of more than five (5) percent directly and ten (10) percent indirectly of any equity security of a listed company; or by a director, officer, or principal stockholder thereof. The issuer of such equity security is likewise required to be included in the annual report disclosure of the above beneficial holders.

In trading securities, the PDTC, regulated by the SEC, facilitates the transfer of shares between market participants. It currently uses a book entry system that does not reflect the actual ownership of the shares traded in scripless form, except if the shareholder requests that a sub-account be registered with PDCT under the shareholder’s name. The shares lodged are registered to a PCNC, where ownership disclosure is only up to the participant level. To account for all beneficial owners, transfer agents submit a monthly report to the PSE and SEC that reconciles the PDCT and transfer agent balances. Beneficial owners are shown more accurately in the register of holders and register of transfers, which are maintained by the transfer agents. If a nominee or record holder of securities does not disclose the beneficial owner, or vice versa, then there is no way that it will be known.

In addition, listed companies are required by the PSE to submit an annual list of stockholders, with information on the corresponding shares owned and percentage of the total outstanding shares of the company, the address and nationality of the shareholder, and the total number of outstanding shares. On a quarterly basis, listed companies are also required to submit a list of the top 100 stockholders, with the corresponding shares owned and percentage of the total outstanding shares. The list should name the broker, dealer, investment house, voting trustees, bank, association, or other entity that exercises fiduciary power, in the nominee’s name or otherwise. All this information is available on the PSE website.

(4) Remuneration policy for board and key executives, and information about directors
In general, directors are not entitled to compensation, except for reasonable per diem or if the by-laws of the corporation so provide, or if the shareholders representing a majority of the outstanding capital stock approve the compensation, but in no case should the compensation exceed the limitations set by the CC. In practice, the general remuneration policy for members of board of directors and management is set and approved by the board of directors. Details of the remuneration of directors and key executives for the last two fiscal years are disclosed in the annual report submitted by the corporation to the SEC and PSE, presented individually and in the aggregate.
The SEC, through the SRC and its implementing rules, regulates the disclosure of director information pertaining to their capacity to hold office and their track record in the company and in other companies where they have had a directorship. Such information is distributed to the shareholders prior to the annual meeting when elections will be held.

(5) Related-party transactions
The Philippines has adopted the use of PAS 24, based on IAS 24, which sets the rules on the disclosure of related-party transactions effective for the annual periods beginning on or after year 2005. Aside from the accounting disclosures in the financial statements, there is a requirement for extensive disclosure in the annual report and notice at the annual meeting of transactions with or involving the company and its subsidiaries in which a director or nominee for election as a director, executive officer, or stockholder owns ten (10) percent or more of total outstanding shares, and members of their immediate family have a direct or indirect material interest. The 2005 audited financial statements have been largely in compliance with PAS24 (IAS24).

For banks, dealings with directors, officers, stockholders, and related interests must be disclosed following the procedural and reportorial requirements in the Manual of Regulations for Banks of the BSP. All other types of relationships with any individual or entity, or reason that any transactions are not arm’s length (e.g., transaction with previous director), must be disclosed.

(6) Foreseeable risk factors
Foreseeable acts are disclosed in the registration statement as part of the periodic non-financial disclosure, which is required by SEC and PSE. Listed companies shall list these disclosures in the order of importance; discuss fully the factors that make the offering speculative or risky; and include management’s plans on how to handle these risks.

(7) Issues regarding employees and other stakeholders
Stock options, compensatory plans, and management contracts with employees are disclosed in the annual report. Information on the number of each type of employee, at present and during the next twelve (12) months, and the benefits or incentive arrangements given to the employees, must be described. Material issues such as labor disputes with and among the employees within the past three (3) years should be disclosed. Significant employees who are not executives but on whom the company is highly dependent are likewise cited. The general policy of human resource development is, however, not disclosed.

Principal suppliers, major supply contracts, and major customers the loss of which would have a material adverse effect on the company, are described in the annual report.

(8) Governance structures and policies
Listed companies are required to submit a manual of corporate governance of their company to the SEC, which shall evaluate the degree of compliance. In the annual report, listed companies are also required to discuss their compliance with and deviation from the manual and the evaluation system used. In practice, most companies have complied with this requirement.

Principle VB: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

Assessment: Largely observed

Compliance with IFRS. Full adoption of the IASs and IFRSs referred to as the Philippine Accounting Standards (PAS) and the Philippine Financial Reporting Standards (PFRS) of the Financial Reporting Standards Council (FRSC) were approved by the Board of Accountancy (BOA) / Professional Regulation Commission (PRC) and SEC, and effectively implemented for the annual year beginning January 1, 2005, as the new set of generally accepted accounting principles in the Philippines. A move toward PAS began in 2001, although full compliance was only implemented beginning January 1, 2005. All applicable IAS and IFRS now supersede the Statement of Financial Accounting Standards (SFAS). For the current year, the adoption of IFRS 6 (Exploration for and Evaluation of Mineral Resources) and IFRS 7 (Financial Instruments: Disclosure, superseding PAS 30 & 32 in part) were approved and shall be effective beginning January 1, 2006 and January 1, 2007, respectively.

Review / enforcement of compliance. The SEC, as a regulatory body having jurisdiction over corporations and partnerships, enforces compliance with IFRS. The Company Registration and Monitoring Department of the SEC conducts compliance audits, reviews of corporate reports, and disclosures of registered entities. Rule 68.1 of the IRR of SRC specifies minimum accounting standards and discourages submission of audited financial statements which carry other than unqualified opinion. Such companies are deemed to have not submitted audited financial statements that address the accounting deficiencies. Likewise, the Philippine Stock Exchange and other related government agencies also enforce
Such audit committees shall be responsible for selecting the external auditor of the company and for conducting an oversight into the quality of audits of financial statements in order to supervise, control and regulate the practice of accountancy in the Philippines. Furthermore, the new law will professionalize accountancy practices to boost business and economy in the country and to eliminate illegal practices in the profession.

**Audit committee.** The establishment of an audit committee is not a legislative requirement in the Philippines. However, the SEC Code of Corporate Governance establishes the composition requirements and functions of the committee; these should be observed by corporations registered under the SEC. Further, SEC mandates all companies listed with the First Board of Exchange to have an audit committee which shall at least have two (2) independent directors, one of whom shall be its head or chairman. Such audit committees shall be responsible for selecting the external auditor of the company and for overseeing the internal audit function.

**Requirements for oversight of audit.** With the passage of the Revised Accountancy Law, the BOA is empowered to conduct an oversight into the quality of audits of financial statements in order to supervise, control and regulate the practice of accountancy in the Philippines. Furthermore, the new law will professionalize accountancy practices to boost business and economy in the country and to eliminate illegal practices in the profession.

**Competent and qualified audit enforcement.** The BOA / PRC, together with government agencies such as the BIR, BSP, and SEC only honor financial statements prepared and signed by external auditors duly accredited by the SEC. Such a mechanism will further strengthen the oversight of the audit profession.

**Auditor qualifications.** An independent auditor must be duly registered with the BOA / PRC in accordance with its rules and regulations, and must be in good standing to qualify for the practice of accountancy; otherwise he / she will not be recognized or allowed by PRC to practice. In 2003, the SEC set out accreditation and reportorial requirements for external auditors of public companies and secondary licensees of the Commission, and made further amendments in 2004. As of February 2006, there were 74 accredited auditing firms and 301 accredited external auditors listed in the SEC. Likewise, BSP requires accreditation of external auditors for banks and similar financial institutions supervised by BSP. The IC has also established accreditation and reporting requirements of external auditors applicable to all its covered institutions. The BIR, as well, requires accreditation of certain tax practitioners engaged in the audit and examination of books of any person, partnership, or corporation.

**Discussion of auditors’ statutory role and responsibilities.** The primary responsibility of the external auditor is to form and express an opinion on the financial statements. Such opinion lends credibility to the management's representations as to the financial statements of the company. The external auditor conducts the audit in accordance with PSA in the Philippines. The external auditor's procedure is to examine, on a test basis, the evidence supporting the amounts and disclosures in the financial statement, and assess accounting principles used and significant estimates made by management, as well as to evaluate the overall financial statement presentation.

Under the Code of Ethics, the professional accountant, which includes the auditor, has to observe fundamental principles in such as integrity, objectivity, professional competence and due care, confidentiality, professional behavior, and the application of technical standards. The auditor also has to observe independence requirements, as prescribed by the same Code.

An external audit engagement contract includes an arrangement if the company fails to comply with the requirement to report any material findings by the auditor involving fraud, error, losses, or potential losses. If the aggregate amounts to at least 10 percent of the consolidated total assets, and any findings indicate that the consolidated assets are no longer adequate to
cover the total claims of the creditors, the external auditor will be the one to disclose the findings to the SEC. The external auditor shall submit his / her findings to the company’s management / audit committee and document management’s explanation and / or corrective action, which shall be included in the report to be submitted to the SEC.  

<table>
<thead>
<tr>
<th>Principle VD: External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.</th>
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</thead>
</table>

**Assessment: Partially observed**

**Auditor accountability.** Under SRC regulations, the external auditor or the auditing firm is held responsible for civil liabilities on account of false statements certified by the same. The auditor may be sued to recover damages done to the claiming party. The auditor is likewise required to disclose any material information and irregularities identified upon examining the company's accounts; these should be presented in the financial statement or disclosed in the notes to financial statement. 

In addition, a CPA who violates any provisions of the Republic Act 9298 (Revised Accountancy Law) and its implementing rules and regulations shall be penalized and fined.

During 2004, four (4) cases were filed with the Ethics Board of Philippine Institute of Certified Public Accountants (PICPA), and one case was recently decided. The cases range from grave misconduct, dishonesty, and conspiracy to commit fraudulent tax evasion, to gross violation of the Code of Ethics, to unethical and corrupt practices. Such complaints and cases against CPAs are also filed with PICPA. If not resolved, a case will be forwarded to BOA / PRC. Usually, major cases are filed directly with the BOA / PRC.

**Auditors’ insurance.** There is no legal or provisional requirement for external auditors’ insurance. However, international auditing firms require their local affiliate to procure professional liability insurance.

<table>
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<tr>
<th>Principle VE: Channels for disseminating information should provide for equal, timely, and cost-efficient access to relevant information by users.</th>
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</table>

**Assessment: Partially observed**

**Material facts.** Listed companies are required to disclose information on a timely basis. They are mandated to disclose any material information or event that would affect an investor’s decision. Selective disclosure is prohibited. Accordingly, an issuer is prohibited from issuing issue material non-public information to any person, unless it is simultaneously disclosed to PSE. This rule, however, has certain exceptions, such as those who are bound by duty to maintain trust and confidence to the issuer, and those who agree in writing to maintain information in strict confidence and not use it for personal gain.

Prompt disclosure is required in the event of creation of a false market for securities, or change in ownership that materially affects market activity. Issuers are required to disclose material information to PSE within ten (10) minutes of the receipt of such information. Should the act occur during trading hours or after trading hours and the issuer is unable to disclose such information prior to the pre-open period of the next trading day, the trading of its shares must be halted to inform the general public of such information. In both cases, the trading halt shall be lifted one (1) hour after the information has been disseminated.

**Published information (papers, web).** Information which is required to be disclosed to the investor public may be accessed through the PSE website. The PSE Research and Public Information Department issues weekly and monthly reports and fact books on a regular basis; all are available at the PSE library. Leading newspapers also cover the stock market.

<table>
<thead>
<tr>
<th>Principle VF: The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies, and others, that is relevant to decisions by investors and free from material conflicts of interest that might compromise the integrity of their analysis or advice.</th>
</tr>
</thead>
</table>

**Assessment: Partially observed**

**Disclosure of conflicts of interest by analysts, brokers, rating agencies, etc.** Every broker / dealer, analyst, and rating agency shall properly inform the public of any conflicts of interest and comply with adequate disclosure rules, as mandated by PSE and SEC. In cases where such a broker / dealer, analyst or rating agency has a material interest in a transaction with or for the investor, he / she shall neither advise nor deal in relation to such transaction. Sanctions / fines are imposed on such erring brokers / dealers, analysts, and rating agencies. No companies have been sanctioned by the SEC during the past three years.
SECTION VI: THE RESPONSIBILITIES OF THE BOARD

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.

Principle VIA: 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.

Assessment: Partially observed

Basic description of board. Listed companies shall have at least two (2) independent directors, or such independent directors shall compose at least twenty percent (20 percent) of the members of such board, whichever is lesser. The board is obliged to direct the resources and to seek the maximum amount of profit for the corporation. The Corporation Code gives the minimum requirement to be a director. Any director can be removed without cause provided that his / her removal shall not deprive the minority shareholders of the representation to which they are entitled.

Size requirements and typical size. The board shall comprise at least five (5) but not more than fifteen (15) members. However, the BSP allows up to 21 board members in cases of merger and consolidation of banks. The typical board size is generally observed to be from 11 to 13 members.

Nomination and election. Under the CC, the election of board members is held annually and the manner of voting may be through voice, by show of hands, or by ballot, if requested by a stockholder or member. They shall be elected, either in person or by representative authorized to act by written proxy, by the owners of the majority of the outstanding capital stock, or if there be no capital stock, by a majority of the members entitled to vote.

Eligibility requirements. Under the CC, board members must meet minimum qualifications. They must own at least one share, be residents of the Philippines, must not have been convicted by a final judgment of an offense punishable by imprisonment, and such other qualifications prescribed in the by-laws.

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

Assessment: Partially observed

Adequacy of duties of loyalty and care. Under the CC, fiduciary duties exist for all directors. Directors are bound to observe duty of care / diligence and loyalty to the corporation in the furtherance of its corporate purpose. They are held liable for assenting to patently unlawful acts, for gross negligence, and for acting in bad faith.

Insurance for directors. Provision for insurance for the directors is not mandatory. Non-life insurance companies are currently offering directors and officers liability insurance. These companies can only transact insurance business if they have obtained a certificate of authority from the IC to conduct such business. Thus, any liability insurance that a corporation intends to procure for its directors purchased from an insurance company duly authorized to do business in the Philippines. Generally, the corporation pays the premium on such insurance. This liability insurance has not gained wide recognition. It remains common practice in the Philippines for corporations to undertake to indemnify their directors and officers under contract for any liability that the latter might incur in the performance of their duties. However, this may not be beneficial in the long run for the directors and officers, since the corporation may later be unable to fund the liability or intentionally exclude certain liabilities that may have been incurred by such directors. With the increasing claims and lawsuits against directors and officers, it would be beneficial for all concerned, including the corporation, to secure liability insurance for its directors and officers.

Board accountability / business judgment rule. Directors must at all times exercise care and loyalty in directing the affairs of the corporation. The business judgment rule, although not expressly provided in the CC, recognizes that corporate power and competence are to be entrusted primarily to the board of directors. The power vested to the directors in the management of the corporation bars judicial inquiry so long as the directors act within the scope of their authority, exercise honest judgment, and act in good faith in the furtherance of corporate purposes.

Principle VIC: The board should apply high ethical standards. It should take into account the interests of stakeholders.

Assessment: Partially observed

Not all companies have a code of ethics. Nevertheless, each company sets its own company policy, which specifies the...
ethical behavior required of the directors and officers in the performance of their duties. Board members should act in the best interest of the corporation because they owe a fiduciary duty to the stockholders. The board is held primarily responsible not only to stockholders but to stakeholders, who have the right to expect that the company is being run in a sound manner. Ayala Land, Inc. has adopted a Code of Conduct governing disclosure of any business and family-related transactions, to ensure that potential conflicts of interest are brought to the attention of the management.

Principle VID: The board should fulfill certain key functions, including:

<table>
<thead>
<tr>
<th>Assessment: Partially observed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Board oversight of general corporate strategy and major decisions</td>
</tr>
<tr>
<td><strong>Board functionality by law and in practice, as recommended by Code.</strong> The specific functions of the board are not defined under the CC. The CC, however, enumerates the powers of corporations incorporated under. This includes, corporate powers to be exercised by the board, in certain cases, with the approval of simple majority or a higher majority of the stockholders, if required. In practice and as allowed under the CC, an executive committee is formed to act on specific matters, but this committee still falls under the oversight of the board.</td>
</tr>
<tr>
<td><strong>Director training, ICD.</strong> Directors’ training is provided by ICD and other institutions. ICD has launched a professional director’s program, whose graduates constitute a pool of prospective independent directors that may be accessed by any company. The Code of Corporate Governance provides for companies to prepare a manual of corporate governance. Its model manual, which has generally been accepted and copied by SEC-covered companies, requires director training. SEC, under Memorandum Circular 15, s. 2002, provided for the accreditation of several training institutions to provide directors with training on corporate governance. Companies must send their directors for training to accredited institutions. The BSP has a stricter requirement for bank directors under its fit and proper rule; it requires that prospective or current directors undergo director orientation seminars at institutions that it has accredited. Bank directors that have not obtained such training are not confirmed by the Monetary Board of the BSP.</td>
</tr>
<tr>
<td>(2) Monitoring effectiveness of company governance practices</td>
</tr>
<tr>
<td>To foster the long-term success of the corporation and secure its sustained competitiveness in a manner consistent with its fiduciary responsibility, the Code of Corporate Governance requires that the board forms an audit and compliance committee. The audit committee is required to be composed of at least three (3) board members, preferably with accounting and finance background, one of whom shall be an independent director and another with related audit experience. The establishment of nomination and compensation committees are permitted but not required.</td>
</tr>
<tr>
<td>(3) Selecting / compensating / monitoring / replacing key executives</td>
</tr>
<tr>
<td>It is the duty of the board to select and appoint executive officers, adopt a professional development program for employees and officers, and make succession plans for senior management. In practice, the board determines the compensation of key executives. The board is allowed to establish a compensation or remuneration committee to perform the said function, but this is not widely practiced.</td>
</tr>
<tr>
<td>(4) Aligning executive and board pay with long-term company and shareholder interests</td>
</tr>
<tr>
<td>There is no specific provision in the law requiring board review of remuneration of key executives, but as a matter of practice, the board sets their remuneration and reviews it at least annually.</td>
</tr>
<tr>
<td>(5) Transparent board nomination / election process</td>
</tr>
<tr>
<td>A nomination committee is required for companies covered by the Code of Corporate Governance. This committee, which is composed of at least three (3) members, one of whom should be an independent director, reviews and evaluates the qualifications of all persons nominated to the board, as well as those nominated to other positions requiring appointment by the board. Nomination in family-owned corporations is, however, dominated by the controlling shareholder. The election of board members is held during the AGM of stockholders. The manner of voting is as specified in the information statement distributed to stockholders prior to the meeting. This statement should disclose information pertaining to the nominees so that stockholders can make an informed decision. Normally, however, the same set of directors is renominated.</td>
</tr>
</tbody>
</table>
### (6) Oversight of insider conflicts of interest, including misuse of company assets and abuse in related-party transactions

The board has an underlying responsibility to oversee conflicts of interest and abuse of related-party transactions. Every director should first and foremost avoid situations that may compromise his/her impartiality. With regard to misuse of company assets and abuse of related-party interests, an internal control committee is assigned to oversee these issues, under board supervision and the oversight of the audit committee. The main responsibility of the internal control committee is to assist the board.

### (7) Oversight of accounting and financial reporting systems, including independent audit and control systems

The board should review the financial statements before such statements are approved and submitted to the stockholders of the company. The chairman of the board signs the statement even if he/she is not one of the company’s executive officers. An audit committee is set up to oversee accurate financial reporting.

### (8) Overseeing disclosure and communications processes

In practice, communications is more the responsibility of the management.

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**Principle VIE: The board should be able to exercise objective independent judgment on corporate affairs.**

**Assessment: Partially observed**

| (1) Director independence | Director independence in law and in the Code. The Code of Corporate Governance defines independence in relation to an independent director. An independent director is defined as a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having any relationship with the corporation that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This means that apart from the directors’ fees and shareholdings, he/she should be independent of management and free from any business or other relationship which could materially interfere with the exercise of his independent judgment.  

   Director independence in practice. All corporations are encouraged to have an independent director, but under the SRC, all issuers of registered securities and public companies are mandated to have at least two (2) independent directors or at least twenty percent (20 percent) of the board size, whichever is lesser. With the SEC’s recent moves to strengthen the practice of good corporate governance through the issuance of several Memorandum Circulars, the independence of directors has significantly improved. In 2002, 230 out of the 405 (or 57 percent) of covered companies had appointed independent directors, in compliance with the Code. In 2003, 276 out of 392 (70 percent) of covered companies complied. |

| (2) Clear and transparent rules on board committees | Audit committees. Companies normally establish audit committees. There are clear rules on the establishment and functions of audit committees.  

   Other committees. Establishment of other committees is permitted under the various laws and regulations, but they are not common. |

| (3) Board commitment to responsibilities | Restrictions on the number of board seats. Currently, none of the supervisory bodies regulates the number of directorships in different companies that one person can hold.  

   Board meeting requirements. The board or trustees of every corporation are required to hold regular meetings on a monthly basis, unless the by-laws provide otherwise. Special meetings may also be conducted upon the call of the president or as provided for in the by-laws. In the Philippines, some directors do not understand fully their roles and responsibilities; this is now being addressed by director training, especially for non-listed companies and other smaller companies.  

   Public availability of board attendance records. The SEC now monitors the attendance of company directors at board meetings. However, compliance is still low for certain market participants. Information on board attendance is not publicly available. |

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

**Assessment: Largely observed**

Boards of directors are given timely and relevant information by management as part of the materials for the board meetings held every month or as fixed in the by-laws.
ENDNOTES

1 Republic Act 7042 as amended by RA 8179, also known as the Foreign Investment Act of 1991 is the basic law that governs foreign investments in the Philippines. It is considered a landmark legislation because it liberalized the entry of foreign investments into the country.


3 This is close to Indonesia at 39.8 percent of GDP, but lower than Thailand at 69.7 percent of GDP, Malaysia at 140.6 percent of GDP, and Korea at 89.6 percent of GDP (2005 figures), based on the IFS, BIS, ADB Asian Bonds Online, and staff calculation.


5 Rule 8, Interim Rules of Procedures Governing Intra-Corporate Controversies.

6 For example, the fines for insider trading (Section 27 of the SRC) amount to Php 200,000 (or about USD4,000) for the first offense and up to Php 200,000 (about USD4,000) for the second. As a point of comparison, the US SEC can impose a civil monetary penalty of up to USD1,210,000 for certain insider trading violations by a controlling person (according to 17 CFR Part 201). On the other hand, the current scale of fines found in SEC Memorandum Circular No. 2, series 2003, should be revised to meet the different level of listings of corporations in the stock market. For example, companies listed in the SME board might find the said penalties heavy.

7 Major regulatory bodies are SEC, PSE, BSP, and IC.

8 “Free float” refers to issued and outstanding shares of a listed company that are not held by strategic partners and owners, and are freely tradable among non-strategic investors.

9 Equity market capitalization as percentage of GDP in 2005 in selected countries in East Asia was: Thailand (69.7); Indonesia (39.8); Korea (89.6); China (20.9); Singapore (220.3) and Malaysia (140.6) based on the IFS, BIS, ADB Asian Bonds Online, and staff calculation.


11 Article XII, Sec. 2 of the Constitution.

12 Philippine National Construction Corporation (PNCC) and Philippine National Oil Company (PNOC) Exploration Corporation.


14 Executive Order No. 389 promulgates the Sixth Regular Foreign Investment Negative List (FINL), dated November 30, 2004. The FINL is a short list of investment areas or activities which may be opened to foreign investors and/or reserved to Filipino nationals. FINL is issued on a regular basis and is effective for a period of two years.

15 Anti-Dummy Law or Commonwealth Act No. 108, as amended, is an Act to punish evasion of the laws on the nationalization of certain rights, franchises, or privileges.

16 Sec. 16, General Banking Act of 2000 (R.A. 8791, May 23, 2000). GBA regulates the organization and operations of banks, quasi-banks, and trust entities and enhanced the supervisory capability and enforcement powers of the BSP. The new GBA liberalized the banking industry by allowing foreign banks to have 100 percent ownership in a distressed bank.

17 The Monetary Board is the policy-making body of the BSP. It is composed of seven members appointed by the President of the Philippines. The Monetary Board exercises the functions and powers of the BSP.


19 A show cause order is a simple order requiring the respondent to appear before the Commission to file its comments and to show cause why the violation and corresponding penalty should not be imposed against the respondent. Issuance of show cause orders is part of the procedures to enforce the CC, the SRC and other laws implemented by the SEC.

20 PDTC is expected to switch to the Name-on Depository account structure by early 2007.

21 PDThe PSE (31.72 percent), Bankers Association of the Philippines (31.72 percent), Financial Executives Institute of Philippine (FINEX) (10 percent), Development Bank of the Philippines (10 percent), Investment Houses Association of the Philippines (6.56 percent), SSS (5 percent), and Citibank N.A. (5 percent).

22 PCD uses book-entry system to record the ownership of shares through a process called lodgment. When a trade is done at the PSE, securities are moved via electronic debit and credit of participants’ securities accounts to effect settlement.
There will be no need for the physical movement of stock certificates (scrip) between buyer and seller.

23 Sec. 4, SRC.
24 Sec. 74, CC.
25 Sec. 63, CC.
26 Sec. 74, CC.
27 Sec. 39, CC.
28 Sec. 40, CC.
29 Sec. 37, CC.
30 Sec. 42, CC.
31 Sec. 38, CC.
32 Sec. 50, CC.
33 Sec. 50, CC.
34 Sec. 6, CC.
35 Sec. 9, CC.
36 Amended SRC Rule 18 and Rule 23.
37 SRC Rule 19 (6), Amended IRR of SRC
38 SRC Rule 19 (7), Amended IRR of SRC.
39 Section 76, CC.
40 Sec. 41, CC.
41 Amended SRC Rule 30.2.
42 Sec. 24, CC.
43 SEC Memorandum Circular No. 4, series 2004.
44 Sec. 6, CC.
45 Sec. 6, CC.
46 Sec. 28, CC.
47 Sec. 74, CC.
48 Sec. 75, CC.
49 Title X of the CC.
52 Sections 24-27, SRC.
53 Section 30, SRC; SRC Chapter VII, Sections 24-26 provide for prohibitions regarding the manipulation of security prices, devices and practices, regulation of option trading, and fraudulent transactions.

54 Chapter VII, Section 27, SRC.
55 Section 15, Amended Disclosure Rules.
56 Brokers / Dealers - First Offense: Php 100,000.00; Second Offense: Php 150,000.00; and Third Offense: Php 200,000.00. Associated Persons - First Offense: Php 50,000.00; Second Offense: Php 75,000.00; and Third Offense: Php 100,000.00.
57 Section 61, 63, SRC.
58 Executive Order No. 226, otherwise known as the Omnibus Investments Code, was enacted in 1987 to develop the country’s industries, establish a competitive investment environment, and discourage monopolies.
59 Republic Act 6981.
60 The primary distribution or sale or offer to sell new or subsequent issues of securities to the general public.
61 Under the online disclosure system, listed companies will be required to submit their disclosures via the internet, and they will be automatically posted on the PSE website.
PDTC is expected to switch to the Name-on Depository account structure by early 2007.

The Manual of Regulations for Banks serves as principal source of all substantive banking regulations in the Philippines.

Annex C as amended under Amended SRC Rule 17.

Financial Reporting Standards Council (FRSC) is the accounting standards setting body in the Philippines. FRSC was formerly known as the Accounting Standards Council (ASC) before enactment of the Rules and Regulations Implementing Republic Act No.9289 (Revised Accountancy Law 2004).

SEC Memorandum Circular No. 4, series 2006.

Auditing and Assurance Standards Council (AASC) is the auditing standard setting body in the Philippines. AASC was formerly known as the Auditing Standards and Practices Council (ASPC) before the enactment of the Rules and Regulations Implementing Republic Act No. 9298 (Revised Accountancy Law of 2004).

Code of Ethics for Professional Accountants in the Philippines was approved by PICPA and adopted by the BOA / PRC for the regulation of practice of the accountancy profession. The Code of Ethics was based on the International Code of Ethics for Professional Accountants developed by the International Federation of Accountants (IFAC). This Code of Ethics became mandatory for all CPAs beginning January 1, 2004.

SEC Memorandum Circular No. 6, series 2004.


As of November of 2005, 123 auditors, including auditing firms, were on the list of auditors accredited by BSP.


Sec. 56 of SRC.

Sec. 36 of R.A. 9298 or the Revised Accountancy Law.


Section 4.2 of the PSE Revised Disclosure Rules.

Sec. 4.1, PSE Revised Disclosure Rules.

Rule 34, Amended IRR of SRC.

Sec. 28, CC.

Sec. 23, CC.

Sec. 31, CC.

Sec 31, 32, 33, 34, CC.


Sec. 53, CC.
### Philippines Terms/Acronyms

| AASC: Auditing and Assurance Standards Council | PICPA: Philippine Institute of Certified Public Accountants |
| ADFIAP: Association of Development Institutions in Asia and the Pacific | PSA: Philippine Standard on Audit |
| AFP-RSBS: Armed Forces of the Philippines Retirement Service and Benefit System | PSE: Philippine Stock Exchange. Also called the Exchange. |
| AIM: Asian Institute of Management – Hills Governance Center | RA: Republic Act |
| AMLA: Anti-Money Laundering Act 2001 | RPT: Related-party Transaction |
| Amended SRC Rules: Amended Implementing Rules and Regulations of the Securities Regulation Code | RTC: Regional Trial Court |
| AGM: Annual General Meeting | SCCP: Securities Clearing Corporation of the Philippines |
| BIR: Bureau of Internal Revenue | SRC: Securities Regulation Code or Republic Act No. 8799 |
| BOA: Board of Accountancy | SRO: Self-Regulatory Organization |
| BOD: Board of Directors | SSS: Social Security System |
| BSAG: Business Sector Advisory Group on Corporate Governance | **Cumulative voting:** This method of voting allows a stockholder to cumulate his shares as many votes as the number of directors to be elected multiplied by the number of his shares and distribute the same among as many candidates as he sees fit. A stockholder can choose to divide the total votes allowed to him or use all to vote for just one director, provided that the total votes cast by such stockholder shall not exceed the number of shares owned by him, as reflected in the books of the corporation. |
| BSP: Bangko Sentral ng Pilipinas | **Demutualization:** The conversion of PSE from a non-stock into a stock corporation, as mandated by Section 33.2 (a) of the SRC on 8 August 2001. |
| CC: Corporation Code of the Philippines (Batas Pambansa Blg. 68 of May 1, 1980) | **Pre-emptive right:** The right of stockholders to subscribe to all issues or disposition of shares of any class, in proportion to each respective shareholding. |
| CCCS: Central Clearing Central Settlement System | **Appraisal right:** The right of a stockholder to demand payment of the fair value of its shares after dissenting from any fundamental change in the corporation. This is referred to in some jurisdictions as the oppressed minority, withdrawal right, or buy-out remedy. |
| CGIP: Corporate Governance Institute of the Philippines | **Dividends:** The portion of the profits of the corporation from the unrestricted retained earnings distributed to the outstanding stockholders of record. Dividends distributed to each stockholder are proportionate to shareholdings, and may be in the form of cash, stock, or property. A dividend right is referred to in some jurisdictions as cash flow rights. |
| CMDC: Capital Market Development Council | |
| DOSRI: Directors, Officers, Stockholders, and Related Interests | |
| DTI: Department of Trade and Industry | |
| FINL: Foreign Investment Negative List | |
| GBA: General Banking Act of 2000 | |
| GOCC: Government Owned and Controlled Corporation | |
| GSIS: Government Service Insurance System | |
| HDMF: The Home Development Mutual Fund | |
| IC: Insurance Commission | |
| ICD: Institute of Corporate Directors | |
| IFRS: International Financial Reporting Standards | |
| ISA: International Standards on Auditing | |
| FIA: Foreign Investment Act of 1991 | |
| FINEX: Financial Executives Institute of the Philippines | |
| FINL: Foreign Investment Negative List | |
| GIS: General Information Sheet | |
| GSIS: Government Service Insurance System | |
| IHAP: Investment House Association of the Philippines | |
| IRR: Implementing Rules and Regulations | |
| OECD: Organization for Economic Cooperation and Development | |
| PAS: Philippine Accounting Standards | |
| PDTC: Philippine Depository & Trust Corporation. | |
| PCNC: PCD Nominee Corporation | |
This report is one in a series of corporate governance country assessments carried out under the Reports on the Observance of Standards and Codes (ROSC) program. The corporate governance ROSC assessments examine the legal and regulatory framework, enforcement activities, and private sector business practices and compliance, and benchmark the practices and compliance of listed firms against the OECD Principles of Corporate Governance.

The assessments:
- use a consistent methodology for assessing national corporate governance practices
- provide a benchmark by which countries can evaluate themselves and gauge progress in corporate governance reforms
- strengthen the ownership of reform in the assessed countries by promoting productive interaction among issuers, investors, regulators and public decision makers
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