Corporate Governance In The Philippines
by Wilfredo A. Baltazar*

Long before the collapse of Enron and WorldCom, the Philippines had its own share of corporate scandals like BW Resources Corporation, whose share prices hit record highs and then collapsed in 1999. These scandals brought down the stock market's image and weakened private investor confidence. The scandals have their roots in management’s desire to project a false picture of performance, with the aim of driving up the value of the corporation in a competitive global market.

Corporate governance is needed to make corporate managements more accountable, and their auditors more rigorous. But good governance requires fair legal frameworks that should be enforced impartially. In this country, the Philippine Securities and Exchange Commission (SEC), a principal player in matters of corporate governance, recently issued Memorandum Circular 2, Series of 2002, otherwise known as the Code of Corporate Governance, under resolution no. 135 dated April 4, 2002. The code is now effective and must be followed under pain of penalty.

The Code aims to promote corporate governance reforms that will raise investor confidence, develop the capital market and help achieve high sustained growth for the corporate sector and the economy. The code applies to: (1) corporations whose securities are registered or listed, (2) corporations who are grantees of permits/licenses and secondary franchises from the Commission, (3) public companies and (4) branches or subsidiaries of foreign corporations operating in the Philippines whose securities are registered or listed.

Some of the code’s salient features are as follows:

The code prescribes that the Board of Directors shall be primarily responsible for the governance of the corporation. The Board should establish the corporation’s vision and mission, strategic objectives, policies and procedures that guide and direct the activities of the company, and the mechanism for monitoring management’s performance.

The Board shall also constitute committees in aid of good corporate governance such as,

a. The Audit Committee, whose responsibility is to inculcate in the minds of Board members the importance of a sound system of internal control and the Board’s oversight responsibility;
b. The Nomination Committee, whose function is to review and evaluate the qualifications of all persons nominated to the Board; and
c. The Compensation or Remuneration Committee, whose task is to establish a formal and transparent procedure for developing a policy on executive remuneration.

The code also emphasizes the importance of the work of the Corporate Secretary, who must be a Filipino and an officer of the corporation. He should work and deal fairly and objectively with all the constituencies of the corporation.

In order for Board Members to fulfill their responsibilities, they should be provided with complete, adequate and timely information prior to Board meetings on an on-going basis.
The Board is primarily accountable to the shareholders, and Management is primarily accountable to the Board. The Board, through the Audit Committee, shall recommend to the stockholders a duly accredited external auditor who shall undertake an independent audit and shall provide an objective assurance on the way in which financial statements are prepared and presented. The external auditor should be rotated every five (5) years or earlier or the handling partner should be changed.

The following stockholders rights should be respected: (1) voting right; (2) pre-emptive right; (3) power of inspection; (4) right to information; (5) right to dividends and (5) appraisal right. The management may establish a performance evaluation system to measure the performance of the Board and top-level management of the corporation.

Disclosure is a vital and dominant theme in the Code. The more transparent the internal workings of the company and cash flows, the more difficult it will be for management and controlling shareholders to misappropriate or mismanage company assets.

Corporations shall promulgate and adopt their corporate governance rules and principles in accordance with the Code. Rules shall be in manual form, available as reference by the directors and submitted to the SEC. Any corporation who fails to adopt a manual of corporate governance shall be penalized P100,000 after due notice and hearing. All corporations affected by this Code shall submit their manual by July 1, 2002 to be effective January 1, 2003. The SEC’s first test, therefore, will be to monitor and act on compliance with this requirement, enforcing penalties on delinquent entities.

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