THE REVISED CORPORATION CODE: Stronger Framework and Governance Towards Better Protection of Minority Rights and Improved Ease of Doing Business

Marian Joanne K. Co-Pua[*]

I. THE REVISED CORPORATION CODE

Republic Act No. 11232, otherwise known as the "Revised Corporation Code of the Philippines" (RCC), is a consolidation of Senate Bill No. 1280 and House Bill No. 8374 aimed at increasing competitiveness and improving ease of doing business, especially considering that the Philippines slipped to rank 124th from rank 113th out of one hundred ninety (190) economies surveyed in the *Doing Business 2019* report of the World Bank. By documenting changes in regulation in twelve (12) areas of business activity in the said economies, *Doing Business* analyzes regulation that encourages efficiency and supports freedom to do business; as it measures how easy or difficult it is for an entrepreneur to open, manage and operate his business, and how such business may readily comply with regulations.

In the sponsorship speech of Senate Bill No. 1280, four (4) main reform clusters were mentioned, to wit:

> First, policies that would enhance the ease of doing business in the Philippines;
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> Second, rules that prioritize corporate and stockholder protection;
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> Third, provisions that instill corporate and civic responsibility; and
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> Fourth, amendments that will strengthen the country's policy and regulatory corporate framework.

The adoption of the RCC in February 2019 readily resulted to a 29-notch jump for the Philippines, now ranked 95th in the *Doing Business 2020* report. Based on the report, the Philippines improved in three areas: starting a

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[*] Doctor of Civil Law: University of Santo Tomas; Lecturer: University of Santo Tomas Faculty of Civil Law and Bulacan State University College of Law; Editorial Board: UST LAW JOURNAL (First Edition - 2019); Editor-in-Chief: UST LAW REVIEW - Vol. 50 (2005-2006).

business, dealing with construction permits, and protecting minority investors. The report stated that starting a business was made easier by abolishing the minimum capital requirement for domestic companies; dealing with construction permits was made easier by improving coordination and streamlining the process for obtaining an occupancy certificate; and protecting minority investors was strengthened by requiring greater disclosure of transactions with interested parties and enhancing director liability for transactions with interested parties.

The Securities and Exchange Commission (SEC) as the overseer of the corporate sector considers the adoption of the RCC as one giant leap forward as it fills the gaps in the four-decade-old Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" (CCP) and supersedes provisions that have become obsolete and even hindersome in a fast-paced and highly competitive environment.[1] According to the SEC, "overall, the Revised Corporation Code fosters inclusive entrepreneurship, improves the ease of doing business in the country and subsequently the economy's competitiveness, promotes good corporate governance, and increases protection afforded to corporations, investors and other stakeholders through progressive provisions."[2]

This article intends to discuss the changes introduced by the RCC championing the four (4) main reform clusters, provide insights on such changes and recent circulars issued by the SEC, and discuss additional measures that may be further adopted to better achieve the laudable objectives of the RCC.

II. IMPROVED EASE OF DOING BUSINESS

The RCC has introduced a number of provisions which seek to enhance ease of doing business in the country, and to keep it up-to-date with global trends and practices. Foremost of these changes are the introduction of One Person Corporations (OPC), reduced number of incorporators and directors, removal of the 25%-25% requirement on subscription and paid-in capital during incorporation, and perpetual corporate term.

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[1] Foreword, SEC Briefer on Revised Corporation Code. Available at: https://www.sec.gov.ph/wp-content/uploads/2019/11/2019RCC_BrieferonRevisedCorporationCode.pdf

[2] Ibid.

A. One-Person Corporation

One of the most talked-about amendments brought by the RCC is the OPC, consisting of a single stockholder who must be a natural person, trust, or estate.[3] The SEC clarified that as an incorporator, the "trust" as referred to by the RCC does not refer to a trust entity, but the subject being managed by a trustee.[4] Quite understandably, banks and quasi-banks, pre-need, trust, insurance, public and publicly-listed companies, and non-chartered government-owned-and-controlled corporations may not incorporate as OPCs, as well as a natural person who is licensed to exercise a profession for the purpose of exercising such profession, except as otherwise provided under special laws.

It is also worthy to mention that an OPC is a stock corporation, considering that it has a capital stock and its incorporator is a single stockholder.

The SEC has stated that registration of an OPC must comply with the separate guidelines on the establishment of an OPC.[5] On 25 April 2019, the SEC promulgated the *Guidelines on the Establishment of a One Person Corporation*.[6]

Similar to ordinary stock corporations (OSC) created after the effectivity of the RCC, no minimum capital stock is required, unless otherwise provided by special law.[7] It is also required to file its Articles of Incorporation (AOI), with the additional requirement of stating the name, nationality and residence of the trustee, administrator, executor, guardian, conservator, custodian or other person exercising fiduciary duties in case the single stockholder is a trust or estate, together with the proof of such authority to act on behalf of the trust or estate.[8] The RCC also requires that the AOI of an OPC substantially contain the name, nationality and residence of the nominee and alternative nominee, as well as the extent, coverage and limitation of their authority.[9]

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[3] An Act Providing for the Revised Corporation Code of the Philippines [REV. CORP. CODE], Republic Act No. 11232, sec. 116, February 23, 2019.
[4] Securities and Exchange Commission, Memorandum Circular No. 7, series of 2019 [SEC Memo. Circ. No. 7, s. 2019], sec. 1, April 26, 2019.
[5] Securities and Exchange Commission, Memorandum Circular No. 16, series of 2019 [SEC Memo. Circ. No. 16, s. 2019], sec. 1, July 30, 2019.
[6] SEC Memo. Circ. No. 7, s. 2019.
[7] REV. CORP. CODE, sec. 117.
[8] REV. CORP. CODE, sec. 118.
[9] Id.

But how does an OPC differ from an OSC? Unlike an OSC, the OPC is not required to submit and file corporate by-laws,[10] as there is only a single stockholder composing the OPC. Also, the corporate name of an OPC must indicate the letters "OPC" either below or at the end thereof.[11]

As to its officers, the RCC provides that the single stockholder shall be the director and president of the OPC.[12] The OPC must also appoint a treasurer and corporate secretary, with the latter office having the explicit restriction that the single stockholder may not be appointed thereto. While the single stockholder may be the self-appointed treasurer, the RCC requires the single stockholder to post a bond and a written undertaking to faithfully administer the funds of the OPC.[13]

The Corporate Secretary of the OPC, aside from his regular record-keeping functions, is required to notify the nominee or alternate nominee, the SEC, and the known legal heirs, of the death or incapacity of the single stockholder.[14]

It is death or incapacity of the single stockholder that triggers the functions of the nominee as director of the OPC to manage its affairs. If incapacity is temporary in nature, the nominee is mandated to manage the affairs of the OPC until the single stockholder, by self-determination, regains the capacity to assume such duties. In case of permanent incapacity or death of the single stockholder, the nominee shall also manage the affairs of the OPC, until the legal heirs of the single stockholder have been determined and the heirs have agreed among themselves who will take the place of the deceased.[15] The heirs may designate one of them or may agree that the estate shall be the single stockholder of the OPC.[16] Moreover, the nominee or alternate nominee shall transfer the shares to the duly designated legal heir or estate within seven (7) days from receipt of either an affidavit of heirship or self-adjudication executed by a sole heir, or any other legal document declaring the legal heirs of the single stockholder, and the legal heirs shall have sixty (60) days from transfer to notify the SEC of their decision to either wind up and dissolve the OPC or convert it into an OSC, as may be applicable.[17]

The alternate nominee is called to action in case of the nominee's inability, incapacity, death, or refusal to discharge the functions as director of the OPC

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[10] REV. CORP. CODE, sec. 119.
[11] REV. CORP. CODE, sec. 120.
[12] REV. CORP. CODE, sec. 121.
[13] REV. CORP. CODE, sec. 122.
[14] REV. CORP. CODE, sec. 123.
[15] SEC Memo. Circ. No. 7, s. 2019, sec. 12.
[16] REV. CORP. CODE, sec. 125.
[17] REV. CORP. CODE, sec. 125 in relation to sec. 132.

to manage its affairs.[18] Should the single stockholder wish to change the nominee or alternative nominee, the names of their replacements must be submitted to the SEC, and the RCC explicitly provides that the AOI need not be amended.[19]

In lieu of meetings, the RCC deems a written resolution, signed and dated by the single stockholder and recorded in the minutes book, as sufficient when action is needed on any matter. Additionally, the date of recording of such written resolution in the minutes book shall be deemed to be the date of the meeting.[20] To highlight the importance of maintaining this minutes book, it is worth noting that the unjustified failure or refusal by the corporation or by those responsible for keeping and maintaining corporate records, like the minutes book, or to allow the inspection or reproduction thereof, is punishable under Section 161 of the RCC, without prejudice to the SEC's contempt powers under Section 157.

As to reportorial requirements, the SEC may place an OPC under delinquent status if it fails to submit reportorial requirements three (3) times, consecutively or intermittently, within a period of five (5) years.[21]

While an OPC for all intents, is a separate juridical person from the single stockholder, the law placed upon the single stockholder the burden of affirmatively showing that the corporation was adequately financed; and to prove that the property of the OPC is independent of the single stockholder's personal property. [22] This is perhaps a recognition of the very thin line between a legitimate OPC and an alter-ego. Thus, the RCC unequivocally states that the principle of piercing the corporate veil applies with equal force to an OPC as with other corporations.[23] The writer submits that considering the novelty of an OPC as a business vehicle in the Philippines and this emphasis on the liability of a single stockholder, the full cost-benefit analysis of opting for an OPC is yet to be seen. This becomes more glaring side-by-side the now reduced requirement on number of incorporators and directors of an OSC. One may wonder if he is better off incorporating an OPC or should he just stick to the traditional OSC, albeit with only two (2) incorporators/directors?

The RCC also allows conversion from a regular corporation to an OPC, when a single stockholder acquires all the stocks of an OSC.[24] Likewise, the

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[18] REV. CORP. CODE, sec. 125.
[19] REV. CORP. CODE, sec. 126.
[20] REV. CORP. CODE, sec. 128.
[21] REV. CORP. CODE, sec. 129.
[22] REV. CORP. CODE, sec. 130.
[23] Id.
[24] REV. CORP. CODE, sec. 131.

RCC allows conversion from an OPC into an OSC. On 14 October 2020, the SEC issued *Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation*[25]. Just the same, whether it be conversion from an OSC to an OPC or vice versa, the successor entity will succeed the previous entity and be legally responsible for the latter's outstanding liabilities as of the date of conversion.

The RCC does not prohibit a foreign natural person in incorporating as an OPC, though he is subject to the applicable constitutional and statutory restrictions on foreign equity in certain areas of business, including compliance with the Eleventh Regular Foreign Investment Negative List.[26]

B. Reduced Number of Incorporators and Directors

The RCC has done away with the minimum number of incorporators and directors, as is expected given the introduction of the OPC. However, this also resulted to a welcome change for OSCs, as the RCC now allows a minimum of two (2) persons to incorporate an OSC and to act as directors.[27]

The CCP allowed any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines to form a private corporation.[28] On the other hand, the RCC dispensed with the minimum number of incorporators while maintaining the maximum of fifteen (15). On 30 July 2019, the SEC issued *Guidelines on the Number and Qualifications of Incorporators under the Revised Corporation Code*, which clarified that for the purpose of forming a new domestic corporation, two (2) or more persons, but not more than fifteen (15), may organize themselves and form a corporation.[29] This emphasized that the only type of corporation allowed to have a single incorporator is a One Person Corporation. OSCs must have at least two (2) incorporators.

Significantly, the RCC allowed partnerships, associations and corporations to be incorporators[30], unlike its predecessor which only allows natural persons as incorporators. Just the same, a natural person who will act as incorporator

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[25] Securities and Exchange Commission, Memorandum Circular No. 27, series of 2020, October 14, 2020.
[26]Executive Order No. 65, series of 2018 [E.O. No.65, s. 2018], the 11th Regular Foreign Investment Negative List, 29 October 2018.
[27] REV. CORP. CODE, sec. 10 in relation to sec. 13.
[28] CORP. CODE (1980), sec. 10.
[29] SEC Memo. Circ. No. 16, s. 2019, sec. 1.
[30] REV. CORP. CODE, sec. 10.

must still be of legal age. The RCC also removed the requirement that majority of the incorporators must be residents of the Philippines.

The same *Guidelines* provide that in the event that an SEC-recorded partnership is made an incorporator, the application for registration must be accompanied by a Partners' Affidavit, duly executed by all the partners, to the effect that they have authorized the partnership to invest in the corporation about to be formed and that they have designated one of the partners to become a signatory to the incorporation documents.[31] Partnerships under "dissolved" or "expired" status with the SEC shall not be authorized to become an incorporator.[32]

On the other hand, in the event that an SEC-registered corporation or association is made an incorporator, its investment in the new corporation must be approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of nonstock corporation, at a meeting duly called for the purpose.[33] This is consistent with Sections 6 and 41 of the RCC on the power of a corporation to invest corporate funds in another corporation or business or for any other purpose, subject to the requisite approval. A Directors'/Trustees' Certificate or Secretary's Certificate, indicating the necessary approvals, as well as the authorized signatory to the incorporation documents, shall be executed under oath and submitted by the applicant; provided that domestic corporations under "delinquent", "suspended", "revoked", or "expired" status with the SEC shall not be authorized to become an incorporator.[34]

A foreign corporation may also act as an incorporator, and in such case, the application for registration must be accompanied by a copy of a document (i.e. Board Resolution, Directors' Certificate, Secretary's Certificate, or its equivalent), duly authenticated by a Philippine Consulate or with an apostille affixed thereto, authorizing the foreign corporation to invest in the corporation being formed and specifically naming the designated signatory on behalf of the foreign corporation.[35] The inclusion of a foreign individual or corporation as an incorporator shall be subject to applicable constitutional, statutory, and regulatory restrictions, as well as conditions with respect to foreign participation in certain investment areas or activities[36], consistent with Section 7 of the RCC which provides that the exclusive right granted to

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[31] SEC Memo. Circ. No. 16, s.2019, sec. 4.
[32] Id.
[33] SEC Memo. Circ. No. 16, s.2019, sec. 5.
[34] Id.
[35] SEC Memo. Circ. No. 16, s.2019, sec. 6.
[36] SEC Memo. Circ. No. 16, s.2019, sec. 9.

Founders' shares must comply with Commonwealth Act No.108, otherwise known as "Anti-Dummy Law", Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991, and other pertinent laws; as well Section 16 which states that the Articles of Incorporation or any amendment thereto may be disapproved if "the required percentage of Filipino ownership of the capital stock under existing laws or the Constitution has not been complied with." Any such investment must comply with the Regular Foreign Investment Negative List.[37]

However, in allowing partnerships, corporations and associations to become incorporators, the *Guidelines* clarified that the individual who signs the Articles of Incorporation on behalf of such entities may not be named as a director or trustee in the same Articles of Incorporation, unless such individual is also the owner of at least one (1) share of stock, or is also a member, of the corporation being formed.[38] This is consistent with Section 22 of the RCC which provides that "directors shall be elected for a term of one (1) year from among the holders of stocks registered in the corporation's books, while trustees shall be elected for a term not exceeding three (3) years from among the members of the corporation" and with Section 91 which states that "except with respect to independent trustees of nonstock corporations vested with public interest, only a member of the corporation shall be elected as trustee." Moreover, the same Section 22 provides that "a director who ceases to own at least one (1) share of stock or a trustee who ceases to be a member of the corporation shall cease to be such".

The RCC further adds the caveat that natural persons who are licensed to practice a profession, partnerships or associations organized for the purpose of practicing a profession shall not be allowed to organize as a corporation unless otherwise provided under special laws.[39]

These changes with respect to incorporators promote ease of doing business by letting the true incorporators apply for registration without having to gather a minimum of five (5) natural persons before an application for registration will be considered compliant under the CCP. Gone are the days when additional "nominees" are invited to become incorporators even if in truth and fact, less than five (5) individuals genuinely want to form the corporation and own most of the shares of stocks or compose the membership. More than a decrease in numerical requirement, this change now

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[37] E.O. No. 65, s. 2018.
[38] SEC Memo. Circ. No. 16, s. 2019, sec. 7.
[39] REV. CORP. CODE, sec. 10.

encourages greater transparency in disclosing the real movers behind a corporation that is being formed.

C. Removal of 25%-25% Requirement on Subscription and Paid-In Capital during Incorporation

Similar to the CCP, the RCC does not require any minimum capital stock, except as otherwise specifically provided by special law.[40] Under the CCP however, at least twenty-five percent (25%) of the authorized capital stock as stated in the AOI must be subscribed at the time of incorporation, and at least twenty-five percent (25%) of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors; provided, however, that in no case shall the paid-up capital be less than Five Thousand (P5,000.00) Pesos.[41] This 25%-25% rule during incorporation has been removed in the RCC, although such requirement is still present with respect to any increase in capital stock.[42] The minimum paid-up capital of at least Five thousand pesos (P5,000.00) was likewise removed in the RCC.

The removal of the 25%-25% rule upon incorporation is another way of encouraging incorporation of corporations and making sure that there is more ease in doing business. Would-be incorporators will now be not precluded by capitalization requirements or availability of funds at the time of application for registration, as a corporation may basically be set-up without any paid-in capital. This does not mean however that a stock corporation can be set-up without an authorized capital stock and without a single stock being subscribed. To recall, Section 3 of the RCC defines stock corporations as those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held. Hence, while there is no minimum required, there must be an authorized capital stock. With respect to subscribed capital, Section 10 of the RCC requires every incorporator to own or subscribe to at least one (1) share of the capital stock, while Section 22 requires every director to have at least one (1) share of stock. Hence, at the very least, from incorporation, there must be subscribed capital equivalent to the one (1) share each of the incorporator/s and director/s.

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[40] REV. CORP. CODE, sec. 12.
[41] CORP. CODE (1980), sec. 13.
[42] REV. CORP. CODE, sec. 37.

The application of the 25%-25% rule is not similarly excused in case of increase of capital stock under Section 37, and this is mainly due to the very reason of seeking an increase of capital stock. Presumably, a corporation seeking an increase of capitalization is prompted to do so because it has already issued or is about to fully issue its existing authorized capital stock in exchange for committed cash, property or other consideration for shares. It cannot be compared to incorporation when the would-be corporation has yet to determine its capital requirements or has yet to commence its operations. In an application for increase of capital stock, the same is basically prompted by the increasing investment and business needs of an existing corporation.

D. Perpetual Corporate Term

Another amendment with great impact is the provision granting perpetual existence to all corporations, both existing and yet to be formed, unless the Articles of Incorporation provides otherwise.[43] Corporations existing prior to the effectivity of the RCC (those with certificates of incorporation and which continue to exist) shall have perpetual existence, unless the corporation, upon a vote of its stockholders representing a majority of its outstanding capital stock, notifies the SEC that it elects to retain its specific corporate term pursuant to its Articles of Incorporation. Perpetual existence is the automatic result under the RCC, while retention of the specific corporate term may only happen if so explicitly elected within the required period.

The SEC issued *Guidelines on Corporate Term*[44] on 18 August 2020, which provided that the decision to retain the specific corporate term as specified in the Articles of Incorporation must be approved during the annual or special meeting duly held for the purpose at the principal office of the corporation by the vote of the stockholders representing a majority of the outstanding capital stock or a majority of the members in case of a non-stock corporation.

The notice to be sent to the SEC (the "Notice") must have been signed by at least a majority of the members of the Board of Directors or Trustees and attested by the Corporate Secretary. Submissions were accepted by the Company Registration and Monitoring Department (CRMD), SEC Satellite Offices, and SEC Extension Offices within a period of two (2) years from the effectivity of the RCC (23 February 2019) or until 23 February 2021, pursuant

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[43] REV. CORP. CODE, sec. 11.

[44] Securities and Exchange Commission, Memorandum Circular No. 22, series of 2020, August 18, 2020.

to Section 185 of the RCC. Corporations that embraced perpetual term of existence were not required to file any Notice to the SEC.

Considering the onset of the COVID-19 health emergency during the two (2) year period within which to file the Notice, it is undetermined if this option may have taken a back seat and has gone unnoticed by some corporations. One may argue that the SEC may not extend the deadline as the two (2) year period was set by the RCC itself under Section 185. Just the same, considering the extension seemingly granted by the SEC to revived corporations under *Memorandum Circular No. 23, series of 2019*[45], where a revived corporation was given a period of two (2) years from the issuance of its Certificate of Revival (not effectivity of the RCC) to comply with the provisions of the RCC, others may argue that the SEC should or could have likewise extended the deadline for filing the Notice in view of the unprecedented interruption caused by the COVID-19 pandemic. The importance of deliberately deciding not to file the Notice is explained in the succeeding paragraphs.

Being a significant decision of the corporation, the RCC provides that any change in the corporate term pursuant to Section 11 will give rise to the appraisal right of dissenting stockholders in accordance with the provisions of the RCC. The same limitation is also mentioned in the *Guidelines*, particularly its third whereas clause.

While it was made clear that appraisal right was availing, consistent with Section 36 of the RCC on extension of corporate term and with Section 80 on both extending and shortening of term, what was left unclear was whether appraisal right was available to both instances of becoming perpetual and retaining the original corporate term. With respect to the former, considering that the conversion to perpetual term is automatic and does not require a meeting of the stockholders or members, there is actually no required meeting where the dissenting stockholder could object to the corporate action and thereafter exercise the appraisal right in accordance with Section 81 of the RCC, despite that fact that becoming perpetual from the original specific corporate term may technically be construed as an extension of term. With respect to the latter, strictly speaking, retention of the original corporate term was not a "change" as it is merely retaining the specific corporate term originally intended by the incorporators, stockholders or members as stated in the Articles of Incorporation.

This presented a novel situation because a perpetual term may have been attained even with inaction by a corporation and its stockholders, yet appraisal

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[45] Securities and Exchange Commission, Memorandum Circular No. 23, series of 2019[SEC Memo. Circ. No. 23, s. 2019], Guidelines on the Revival of Expired Corporations, November 21, 2019.

right was given to dissenting stockholders. This is a matter that must be clarified by the SEC or settled by the Supreme Court should any intra-corporate dispute arising from the interpretation of Section 11 of the RCC reaches the high court.

Just the same, as the proviso stated "any change", it is submitted that appraisal right was available whether with respect to the automatic application of perpetual term, or the retention of the original corporate term. However, in case of the automatic application of perpetual term, it is suggested that the same should have been exercised within the same two (2) year period granted for retaining the corporate term, or until 23 February 2021. Not submitting to a vote the option to retain the corporate term may be considered a corporate action in itself, and from which, appraisal right may be exercised by the stockholders of a stock corporation.

Moreover, the situation may become more problematic when we consider that appraisal right is a principle not applicable to non-stock corporations, and yet, there are non-stock proprietary corporations where members have distributive rights at the end of the corporate term but have no dividend rights throughout the corporation's lifetime. Imagine purchasing a significantly priced membership certificate in a non-stock proprietary corporation and suddenly being told that the corporate term has now become perpetual in view of the RCC since no action was taken within two (2) years from its effectivity; and that even if an action was submitted to a vote, you have no appraisal right considering that the corporation is a non-stock corporation?

Once perpetual, a vote of 2/3 of the membership is needed in order to shorten the term. Thus theoretically, a proprietary member with distributive rights upon dissolution may have found himself at the mercy of the majority as to when such distributive rights may be realized. In this case, this amendment, despite its noble intention, may have proven to be a black swan event to such proprietary members. Of course, under Section 49 of the RCC, any stockholder or member is given the right to propose a special meeting, or add items in the agenda, whether in a regular or special meeting. However, while the meeting may be forced to be called upon the instance of one (1) member, or this specific item may be added in the agenda, such member might have to cross his fingers that the majority will vote with him in order to keep the original corporate term. Otherwise, the corporate term becomes perpetual, without any appraisal right to give him an earlier way out. Terminating his membership and selling his proprietary certificate is of course an option, but may not yield the same economic value as what he stands to get upon dissolution and liquidation of the corporation.

Furthermore, while the purpose of the amendment is geared towards ease of doing business, with end view of relieving corporations the hassle of extending their corporate terms after fifty (50) years or when the original corporate term is about to expire, the writer submits that this posed an unintended consequence. It is submitted that a more equitable provision consistent with the original intention of the stockholders/members as embodied in the Articles of Incorporation was to grant all existing corporations the right to avail of perpetual existence within two (2) years from the effectivity of the RCC by mere majority vote, and to consider that the existing corporation has elected to retain its original term if no notice was filed within the said period. This proposal is already a relaxation of the 2/3 vote requirement required under Section 36 and seems to be more in keeping with the rights of the stockholders/members to voluntarily agree on the term consistent with Section 6 where even non-voting shares are granted the right to vote on any amendment of the AOI or with Section 80 providing for appraisal right. After all, they incorporated, joined and/or invested with the corporation knowing fully well its original corporate term.

E. Extension and Revival of Corporate Term

Additional amendments introduced with respect to corporate term are: the reduction from five (5) to three (3) years prior to the original or subsequent expiry date within which an extension of corporate term may be submitted, in case of corporations with specific period; and the allowance of revival of corporate existence.[46] Notably, this revival does not give 'dead' corporations a clean slate, as the RCC states that all rights and privileges under its certificate of incorporation and all duties, debts and liabilities existing prior to revival, are brought to life along with the revived corporation. This amendment was perhaps brought about by the experience in the past that several companies who failed to monitor the expiry dates of their corporate term have no other choice but to undergo liquidation, as when the term already ended or expires, there is nothing more to extend.

With respect to revival of corporate existence, the SEC has issued the *Guidelines on the Revival of Expired Corporations*[47]. Under the said *Guidelines*, the following corporations may file a Petition for Revival of Corporate Existence[48]:

1. Generally, a corporation whose term has expired;

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[46] REV. CORP. CODE, sec. 11.
[47] SEC Memo. Circ. No. 23, s. 2019.
[48] SEC Memo. Circ. No. 23, s. 2019, sec. 1.

2. An Expired Corporation whose Certificate of Registration has been revoked for non-filing of reports (e.g. General Information Sheet, and Audited Financial Statements), provided that it shall file the proper Petition to Lift its Revoked Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof;

3. An Expired Corporation whose Certificate of Registration has been suspended, provided that it shall file the proper Petition to Lift its Suspended Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof; or

4. An Expired Corporation whose corporate name has already been validly re-used, and is currently being used, by another existing corporation duly registered with the SEC, provided that the former shall change its corporate name within thirty (30) days from the issuance of its Certificate of Revival of Corporate Existence.

The *Guidelines* also enumerate the corporations who may not apply for revival, to wit[49]:

1. An Expired Corporation which has completed the liquidation of its assets;

2. A corporation whose Certificate of Registration has been revoked for reasons other than non-filing of reports (e.g. General Information Sheet and Audited Financial Statements);

3. A corporation dissolved by virtue of Sections 6(c) and 6(d) of Presidential Decree No. 902-A, as amended by Presidential Decree No. 1799; or

4. An Expired Corporation which already availed of re-registration, in accordance with Memorandum Circular No. 13, series of 2019 *(Amended Guidelines and Procedures on the Use of Corporate and Partnership Names)*, or other memorandum circulars issued by the Commission pertaining to re-registration, except when:

    a. The re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to undergo voluntary dissolution immediately after the issuance of the Petitioner's Certificate of Revival; or

    b. The re-registered corporation has given its consent to the Petitioner to use its corporate name and has undertaken to

[49] SEC Memo. Circ. No. 23, s.2019, sec. 2.

> change its corporate name immediately after the issuance of the Petitioner's Certificate of Revival.

Furthermore, the *Guidelines* provide that at least majority vote of the board of directors or trustees, and the vote of at least majority of the outstanding capital stock or members in case of non-stock corporations, shall be required for the Revival of an Expired Corporation[50], with the Petition for Revival filed with the SEC CRMD, any SEC Satellite Office, or any SEC Extension Office.[51] The Expired Corporation must also pay a Petition Fee, currently at Three thousand and sixty pesos (P3,060.00), and Filing Fee based on the authorized capital stock (for stock corporations) pursuant to *SEC Memorandum Circular No. 3, Series of 2017*, or other amendments thereto.[52]

The foregoing brings to the fore at least two (2) important points.

First, while revival is basically an "extension" of the corporate term, albeit termed as "revival" since there is nothing more to extend, it would appear that the vote requirement for revival which is just majority, is less than the 2/3 vote requirement for extension of corporate term under Section 36. This might be justified by the legislative intent of making it easier for corporations to continue their corporate existence despite the expiry of its corporate term. However, conversely, it may also be interpreted that the corporate term was not earlier extended since a significant percentage of the stockholders or members were against it. Thus, it is submitted that the better alternative would have been to apply the same voting threshold to shortening and extending of corporate term, in order to truly equip the corporation with greater ease of changing its corporate term depending on its future requirements and as exigencies may require. This is especially significant considering that any dissenting stockholder has an appraisal right.

Speaking of appraisal right, while Section 11 is unclear whether a stockholder has an appraisal right in case of revival, it is submitted that the proviso "any change in the corporate term under this section is without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of the RCC" means any change, and necessarily includes revival. Furthermore, the same has been clarified by the SEC under Section 10 of the *Guidelines*, which explicitly state that the revival of the corporate existence is without prejudice to the appraisal right of dissenting stockholders. Evidently, revival is being considered as similar to extension of corporate term under Section 36 where appraisal right is available.

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[50] SEC Memo. Circ. No. 23, s.2019, sec. 3.
[51] SEC Memo. Circ. No. 23, s.2019, sec. 4.
[52] SEC Memo. Circ. No. 23, s.2019, sec. 5.

Second, it bears emphasis that corporations currently existing and elected to retain their original corporate term, or those yet to be incorporated but will elect a specific term, must also consider the cost implications of revival and extending the corporate term. If for some reason, a corporation which elected to retain its original corporate term instead of automatic perpetual term or would incorporate with a specific term, subsequently seeks extension of corporate term or revival, it will have to pay again Filing Fees based on its authorized capital stock. This may prove to be significant as Filing Fees under the said *Memorandum Circular* is equal to one-fifth (1/5) of one percent (1%) of the authorized capital stock but not less than Two thousand pesos (P2,000.00) or the subscription price of the subscribed capital stock, whichever is higher in case of stock corporations with par value; and equal to one-fifth (1/5) of one percent (1%) of the authorized capital stock computed at One hundred pesos (P100.00) per share but not less than Two thousand pesos (P2,000.00) or the issue value of the subscribed capital stock, whichever is higher, in case of stock corporations without par value. Non-stock corporations only pay Two thousand pesos (P2,000.00).

The *Guidelines* reiterate the requirement under Section 11 that no application for revival of certificate of incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, non-stock savings and loan associations (NSSLAs), pawnshops, corporations engaged in money service business, and other financial intermediaries shall be approved by the SEC unless accompanied by a favorable recommendation of the appropriate government agency. This is in keeping with the usual importance accorded to the regulatory or supervising government agencies to express its conformity or objection to important corporate actions of its regulated or supervised entities.

Detailed procedure and documentary requirements for a Petition for Revival of Corporate Existence are outlined and enumerated in the *Guidelines*. It is worth noting that the *Guidelines* also provided for three (3) measures pursuant to the SEC's powers under Section 179, to wit:

1. To extend to the revived corporations a benefit similar to that provided under Section 185 of the RCC, a revived corporation shall be given a period of two (2) years from the issuance of its Certificate of Revival to comply with the provisions of the RCC, unless otherwise provided in the *Guidelines*[53];
2. In the broader interest of justice and in order to best serve public interest, the SEC may, in particular matter, exempt the Expired

[53] SEC Memo. Circ. No. 23, s.2019, sec. 9.

Corporation from the *Guidelines* in exceptional cases and apply such suitable, fair, and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases[54]; and

3. The pertinent procedures of the Rules of Procedure of the SEC and the Rules of Court of the Philippines, may, in the interest of expeditious dispensation of justice, and whenever practicable, be applied by analogy or in a suppletory character and effect[55].

As earlier pointed out, it is submitted that if the SEC is empowered under Section 179 to extend to the revived corporation the opportunity to comply with the provisions of the RCC within a period of two (2) years from the issuance of its Certificate of Revival (not two (2) years from effectivity of the RCC), an "extension" may perhaps be likewise extended with respect to retention of corporate term, in view of the COVID-19 interruption.

III. CORPORATE AND STOCKHOLDER PROTECTION

The RCC also addressed the need for greater protection from unsound, non-transparent and abusive practices, as well as ability to timely and swiftly respond to exigencies and emergencies. The RCC provided the SEC with the authority to remove directors; has set additional grounds for disqualification of directors, trustees, and officer; has authorized the corporations to find a replacement director or trustee when exigencies require; and required a Compliance Officer for corporations vested with public interest. Stockholder participation in corporate decisions has also been made more inclusive through increased methods of voting, strengthened right of inspection of corporate records, right to put items on the agenda, and calling of special stockholders' meetings. Furthermore, the disclosure requirements traditionally exacted only from publicly-listed companies, public companies or whose securities are registered with the SEC, are now recommended to be disclosed and provided to the stockholders and members for each meeting of the stockholders or members, regardless of the type of corporation.[56]

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[54] SEC Memo. Circ. No. 23, s.2019, sec. 11.
[55] SEC Memo. Circ. No. 23, s. 2019, sec. 12.
[56] REV. CORP. CODE, sec. 14.

A. Power of the SEC to Remove Directors and Additional Disqualifications for Directors, Trustees, and Officers

The RCC allows the SEC, *motu proprio* or upon verified complaint, and after due notice and hearing, to order the removal of a director or trustee elected despite the disqualification, or whose disqualification arose or is discovered subsequent to an election. Additionally, the board of directors or trustees who failed to remove such disqualified director or trustee despite knowledge of such disqualification may be thereafter sanctioned by the SEC.[57]

Furthermore, in addition to conviction by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years, or a violation of CCP committed within five (5) years prior to the date of his election or appointment, the RCC now provides that a person shall be disqualified from being a director, trustee, or officer of any corporation if, within five (5) years prior to the election or appointment as such, the person was:

1. Convicted by final judgment: (1) of an offense punishable by imprisonment for a period exceeding six (6) years; (2) for violating the RCC; and (3) for violating Republic Act No. 8799, otherwise known as "The Securities Regulation Code";
2. Found administratively liable for any offense involving fraudulent acts; and
3. By a foreign court or equivalent foreign regulatory authority for acts, violations, or misconduct similar to those enumerated in paragraphs (a) and (b) above.

The RCC also expressly reserves other qualifications or other disqualifications, which the SEC as the primary regulatory agency, or the Philippine Competition Commission may impose in its promotion of good corporate governance or as a sanction in its administrative proceedings.

These additional qualifications and disqualifications are intended to further promote good corporate governance, integrity, and probity among the ranks of people who would exercise the corporate powers, conduct the business of the corporation, and control its properties.

B. Emergency Board

Another new concept introduced by the RCC is the creation of an emergency board. It is to be constituted when any vacancy in the board of

[57] REV. CORP. CODE, sec. 27.

directors or trustees prevents the remaining directors or trustees from constituting a quorum, and emergency action is required to prevent grave, substantial, and irreparable loss, or damage to the corporation.[58]

The term "emergency board" may be a misnomer, as the board is not completely replaced; rather the vacancy may be temporarily filled from among the officers of the corporation, requiring unanimous vote of the remaining directors or trustees. Perhaps "emergency director/trustee" or "interim director/trustee" may have been a more accurate term. Just the same, this new provision is highly welcome considering that in the past, the only option of the corporation, despite the presence of an emergency situation requiring swift action, is to call a stockholders meeting.

An important caveat to the creation of an emergency board is that the action by the designated director or trustee shall be limited to the emergency action necessary, and his term shall cease within a reasonable time from the termination of the emergency, or upon election of the replacement director or trustee, whichever comes earlier. To further guard against abuse, the RCC also requires the corporation to notify the Commission within three (3) days from the creation of the emergency board, stating therein the reason for its creation.

C. Independent Directors/Trustees and Corporate Officers

While the concept of independent directors and trustees is not new, the RCC is now replete with provisions highlighting its importance. It specifically states that corporations vested with public interest shall have independent directors constituting at least twenty percent (20%) of such board[59], and has enumerated the corporations deemed to be vested with public interest, to wit:

1. Corporations covered by Section 17.2 of Republic Act No. 8799, otherwise known as "The Securities Regulation Code," namely those whose securities are registered with the SEC, corporations listed with an exchange (otherwise known as "publicly-listed companies) or with assets of at least Fifty million pesos (P50,000,000.00) and having two hundred (200) or more holders of shares, with at least one hundred (100) shares of a class of its equity shares (otherwise known as public companies);

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[58] REV. CORP. CODE, sec. 28.
[59] REV. CORP. CODE, sec. 22.

2. Banks and quasi-banks, NSSLAs, pawnshops, corporations engaged in money service business, pre-need, trust and insurance companies, and other financial intermediaries; and

3. Other corporations engaged in business vested with public interest similar to the above, as may be determined by the SEC, after taking into account relevant factors which are germane to the objective and purpose of requiring the election of an independent director, such as the extent of minority ownership, type of financial products or securities issued or offered to investors, public interest involved in the nature of business operations, and other analogous factors.

Furthermore, pursuant to the powers of the SEC under Section 179 of the RCC, the SEC may prescribe the number of independent directors and the minimum criteria in determining the independence of a director. The independent directors shall also be subject to rules and regulations governing their qualifications, disqualifications, voting requirements, duration of term and term limit, maximum number of board memberships and other requirements that the SEC will prescribe to strengthen their independence and align with international best practices.

With respect to officers, the RCC now explicitly requires that the treasurer of a corporation be a resident of the Philippines. Previously, the CCP only stated that the treasurer may or may not be director, although the SEC for its part, has long issued an opinion stating that the treasurer, in view of the nature of his functions, must be a resident of the Philippines. This has now been institutionalized by its incorporation in the RCC.

For corporations vested with public interest, the RCC requires the board of directors or trustees to elect a Compliance Officer. The SEC has also issued the *Code of Corporate Governance for Public Companies and Registered Issuers*[60], which provides that the Compliance Officer must be a separate individual from the Corporate Secretary; must have a rank of Senior Vice President or an equivalent position with adequate stature and authority in the corporation; should not be a member of the Board of Directors; and should annually attend a training on corporate governance. He has, among others, the following duties and responsibilities:

1. Ensures proper on-boarding of new directors;

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[60] Securities and Exchange Commission, Memorandum Circular No. 24, series of 2019, December 19, 2019.

2. Monitors, reviews, evaluates, and ensures compliance by the corporation, its officers and directors with relevant laws, this Code, rules and regulations and all governance issuances of regulatory agencies;
3. Reports to the Board if violations are found and recommends the imposition of appropriate disciplinary action;
4. Ensures the integrity and accuracy of all documentary and electronic submissions as may be allowed under SEC rules and regulations;
5. Appears before the SEC when summoned in relation to compliance with the [Code of Corporate Governance] and other relevant rules and regulations;
6. Collaborates with other departments within the company to properly address compliance issues, which may be subject to investigation;
7. Collaborates with other departments within the company to properly address compliance issues, which may be subject to investigation;
8. Identifies possible areas of compliance issues and works towards the resolution of the same;
9. Ensures the attendance of board members and key officers to relevant trainings; and
10. Performs such other duties and responsibilities as may be provided by the Board and SEC.

D. Dealings of Directors, Trustees or Officers with the Corporation

Previously under the CCP, only the contracts between a corporation with its directors, trustees or officers are voidable. Under the RCC however, contracts between the corporation and directors' spouses and relatives within the fourth civil degree of consanguinity or affinity have likewise been declared voidable.

Under the CCP, a material contract lacking the requisites of (a) Board approval without the need for the director's presence to constitute quorum and (b) vote of the director concerned, may be ratified by stockholders representing at least two-thirds (2/3) of the outstanding capital stock or two-thirds (2/3) of the members. However under the RCC, even the absence of

the third (3rd) requirement - that the contract is fair and reasonable under the circumstances, may likewise be ratified by the stockholders or members. However, a closer scrutiny of the provision shows that the last sentence of Section 31 requires that the contract being submitted for ratification must be fair and reasonable under the circumstances. It is submitted that the better interpretation is that a contract which is not fair and reasonable may not be ratified for being contrary to public policy. Afterall, the very same provision requires that the contract must be fair and reasonable under the circumstances.

In case of corporations vested with public interest, material contracts must be approved by at least two-thirds (2/3) of the entire membership of the Board of Directors, with at least majority of the independent directors voting to approve the material contract.[61] In connection with this, the SEC issued *Memorandum Circular No. 10, series of 2019*, directing publicly-listed companies to adopt a policy governing material related party transactions (RPTs). Material RPTs was defined as transactions amounting to ten percent (10%) or more of the company's total assets.

E. Remote or Electronic Means of Communication and Voting In-Absentia

Several sections of the RCC promote the attendance, participation, and voting via remote or electronic means of communication and *in absentia*.

Section 52 authorizes directors or trustees who cannot physically attend or vote at board meetings to participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate. Such director or trustee shall be deemed present for the purpose of attaining quorum. This is helpful especially that members of the board cannot attend by proxy considering the personal nature of their position. This innovation allows them to still participate, attend and vote despite inability to be physically present at the venue of the meeting.

The RCC likewise allows stockholders or members to vote through remote communication or *in absentia* in the election of directors or trustees, as long as it is so authorized by the by-laws or by a majority of the board of directors.[62] Corporations vested with public interest, however, are exempted from the requirement of a provision in the by-laws allowing voting through remote communication or *in absentia*. Moreover, in all regular and special meetings of the stockholders and members, Section 49 allows the stockholders to vote

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[61] REV. CORP. CODE, sec. 31(d).
[62] REV. CORP. CODE, sec. 23.

through remote communication or *in absentia* when so authorized in the by-laws. Additionally, a stockholder or member who participates through remote communication or *in absentia* shall be deemed present for purposes of quorum.

The SEC was mandated to issue the rules and regulations governing participation and voting through remote communication or in absentia, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the protection and promotion of shareholders' or members' meetings. On 12 March 2020, the SEC issued *Guidelines on the Attendance and Participation of Directors, Trustees, Stockholders, Members, and Other Persons of Corporations in Regular and Special Meetings through Teleconferencing, Video Conference and Other Remote or Electronic Means of Communication*[63] to fully implement Section 49 of the RCC.

The said Guidelines further clarify that stockholders or members who cannot attend the stockholders' or members' meeting at the designated venue may participate in such meetings through remote communications or other alternative modes of communication not just when so provided in the by-laws but also, when so provided by a resolution of a majority of the board of directors, provided that the resolution shall only be applicable for a particular meeting[64]. This became significantly important in light of the various community quarantines during this COVID-19 pandemic preventing physical meetings and giving rise to virtual meetings. In fact, under Section 16 of the *Guidelines*, it is provided that in order to immediately operationalize the guidelines, corporations, upon approval of the circular, may already conduct their board meetings and stockholders' and members' meeting through remote communication or other alternative modes of communication for the limited purpose of approving the provisions in their by-laws or internal procedures which will govern participation in board meetings and stockholders' and members' meetings by means of remote communication or other alternative modes of communication.

F. Right to Inspect

While the CCP provided that the right to inspect all records of business transactions of the corporation and the minutes of any meetings is available to any director, trustee, stockholder or member of the corporation[65], the RCC takes the right of inspection a step further.

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[63] Securities and Exchange Commission, Memorandum Circular No. 6, series of 2020[SEC Memo. Circ. No. 6, s. 2020], March 12, 2020.
[64] SEC Memo. Circ. No. 6, s. 2020, sec. 10.
[65] CORP. CODE (1980), sec.74.

Corporate records, regardless of the form in which they are stored, shall be open to inspection by a director, trustee, stockholder or member of the corporation, who may conduct such inspection in person or through a representative. The RCC also enumerates with particularity the information relating to the corporation that shall be kept and carefully preserved at its principal office, to wit: (a) The articles of incorporation and by-laws of the corporation and all their amendments; (b) the current ownership structure and voting rights of the corporation, including lists of stockholders or members, group structures, intra-group relations, ownership data, and beneficial ownership; (c) the names and addresses of all the members of the board of directors or trustees and the executive officers; (d) a record of all business transactions; (e) a record of the resolutions of the board of directors or trustees and of the stockholders or members; (f) copies of the latest reportorial requirements submitted to the Commission; and (g) the minutes of all meetings of stockholders or members, or of the board of directors or trustees (such minutes shall set forth in detail, among others: the time and place of the meeting held, how it was authorized, the notice given, the agenda therefor, whether the meeting was regular or special, its object if special, those present and absent, and every act done or ordered done at the meeting; upon the demand of a director, trustee, stockholder or member the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made; and the protest of a director, trustee, stockholder or member on any action or proposed action must be recorded in full upon their demand).

The RCC further provides that stock corporations must also keep a stock and transfer book, which shall contain a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stocks for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, by and to whom made; and such other entries as the by-laws may prescribe; and that the stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.

Similar to the CCP, any officer or agent of the corporation who refuses inspection shall be liable for damages and for the offense of violation of duty to allow inspection or reproduction as provided in the code. The RCC similarly imposes the liability to the directors or trustees who voted for such refusal if such refusal is made pursuant to a resolution or order of the board of directors

or trustees. However, it bears stressing that unlike the previous Section 74 in relation to Section 144 of the CCP which imposed the penalty of fine of not less than One thousand (P1,000.00) pesos but not more than Ten thousand (P10,000.00) pesos or imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court, the present Section 73 in relation to Section 161 of the RCC, while still ascribing to a criminal offense, now only provides for a penalty of fine, albeit more significant in amount. Particularly, Section 161 imposes a fine ranging from Ten thousand pesos (P10,000.00) to Two hundred thousand pesos (P200,000.00), at the discretion of the Court, taking into consideration the seriousness of the violation and its implications; and when the violation is injurious or detrimental to the public, the penalty is a fine ranging from Twenty thousand pesos (P20,000.00) to Four hundred thousand pesos (P400,000.00). Section 161 further provides that the penalties imposed therein shall be without prejudice to the Commission's exercise of its contempt powers under Section 157 of the RCC.

It is also important to highlight that Section 161 does not only punish violation of Section 73, but also, of Sections 45, 92, 128, 177 and other pertinent rules and provisions of this Code on inspection and reproduction of records. To recall, Section 45 provides that "the bylaws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours"; Section 92 provides that a non-stock "corporation shall, at all times, keep a list of its members and their proxies in the form the Commission may require"; Section 128 provides that with respect to an OPC, when "action is needed on any matter, it shall be sufficient to prepare a written resolution, signed and dated by the single stockholder, and recorded in the minutes book" of the OPC; and Section 177 provides for the reportorial requirements of every corporation, domestic or foreign, doing business in the Philippines, and which shall likewise be available for inspection and reproduction.

The RCC also allows an inspecting party who is refused inspection to report such denial or inaction to the SEC, which will conduct a summary investigation within five (5) days from receipt of such report; and issue an order directing the inspection or reproduction of the requested records. On 20 August 2020, the SEC issued *Guidelines in the Filing, Investigation and Resolution of Complaints for Violation of the Right to Inspect and/or Reproduce Corporate Records*.[66] It bears stressing that under the *Guidelines*, and perhaps to discourage abuse of

[66]Securities and Exchange Commission, Memorandum Circular No. 25, series of 2020 [SEC Memo. Circ. No. 25, s. 2020], August 20, 2020.

the process, the report must be in the form of a verified complaint with a certification against forum shopping, with a statement that the complainant acted in good faith or for a legitimate purpose in making the demand to examine or reproduce; and a verified answer is equally required from the respondent/s.[67]

To further emphasize the importance of the right to inspect and/or reproduce the corporate records, the *Guidelines* also provide that the withdrawal of a verified complaint does not automatically result in the outright dismissal of the investigation on the violation of the right to inspect and/or reproduce corporate records, nor discharge the respondent/s from possible imposition of any administrative sanction or penalty when there is merit to the charges or where there is documentary evidence which would tend to establish a prima facie case warranting the continuation of the proceedings[68]. This goes to show that the violation is not just a violation of the right of the particular stockholder, but an indication of the criminal liability of the corporation for violating its duties and obligations under the RCC. Hopefully, this will further encourage corporations and their responsible officers to be more mindful of these rights and to attend to the requests and demands of the stockholders at the earliest opportunity. After all, good corporate governance requires both transparency and timeliness.

Additionally, consistent with the rule that a dispute shall be non-arbitrable when it involves criminal offenses and interests of third parties[69], the *Guidelines* also expressly provide that the "provisions of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004" (ADR Act), its implementing rules and regulations, and the arbitration agreements provided in the articles of incorporation or by-laws of corporations shall not apply to the resolution or settlement of disputes or controversies arising from violation of the right to inspect and/or reproduce corporate records."[70]

It is worth noting that the RCC's amendments with respect to the right of inspection are to the benefit of the corporation as well. The inspecting or reproducing party is bound by confidentiality rules under prevailing laws, such as the Intellectual Property Code (IPC), Data Privacy Act of 2012 (DPA), and The Securities Regulation Code (SRC). The RCC also imposes a fine ranging from Five thousand pesos (P5,000) to Two million pesos (P2,000,000)[71] upon

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[67] SEC Memo. Circ. No. 25, s. 2020, secs. 1-6.
[68] SEC Memo. Circ. No. 25, s. 2020, sec. 8.
[69] REV.CORP. CODE, sec. 181.
[70] SEC Memo. Circ. No. 25, s. 2020, sec. 19.
[71] REV.CORP. CODE, sec. 158.

any stockholder who abuses the right of inspection, without prejudice to the provisions of the IPC and the DPA.

More importantly, the RCC expressly states that a competitor, director, officer, controlling stockholder or someone who otherwise represents the interests of a competitor shall have no right to inspect or demand reproduction of corporate records.[72] Thus, refusal of the right of inspection is supported with the defense that the demanding party has improperly used any information secured through any prior examination of records of the corporation or any other corporation, or was not acting in good faith or for a legitimate purpose, or is a competitor, director, officer, controlling stockholder, or otherwise represents the interests of a competitor. What used to be only embodied in jurisprudence with respect to competitors is now expressly provided for in the RCC.

G. *Notice of Meetings of Stockholders*

Section 49 of the RCC increased the notice period for calling the stockholders' and members' meetings. While the CCP provided for two (2) weeks and one (1) week prior notice for regular and special meetings, respectively, the RCC provides for at least twenty-one (21) days' notice for regular meetings and the same one (1) week period for special meetings. What is interesting however is the proviso "unless a different period is required in the by-laws, law or regulation". Prior to the RCC, jurisprudence interpreted such proviso in such a way that the by-laws may provide for a shorter period than that provided in the CCP, since it merely states unless a different period is provided in the by-laws. However, while the RCC also does not expressly indicate "longer" period, but merely provides "unless a different period is provided", the SEC in at least two (2) memorandum circulars indicated that the notice period, at the minimum, should be at least twenty one (21) calendar days prior to the date of the stockholders meeting[73]; and that the period that may be otherwise provided in the by-laws shall be longer than (not shorter than) twenty one (21) days for regular meetings and one (1) week for special meetings.[74]. Thus, read together, the RCC and memorandum circulars require that at the minimum, at least twenty-one days' prior notice must be provided for regular meetings, and at least one (1) week prior notice must be provided for special meetings. This is of course without prejudice to the right of the

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[72] REV.CORP. CODE, sec. 73.
[73]Securities and Exchange Commission, Memorandum Circular No. 3, series of 2020, sec. 3, February 21, 2020.
[74] SEC Memo. Circ. No. 6, s. 2020, sec. 14.

stockholders to waive the notice of any meeting, whether expressly or impliedly.

H. Calling of Special Stockholders' Meetings and the SEC's Power to Call a Meeting

On 23 April 2021, the SEC issued SEC Memorandum Circular No. 7, series of 2021 pertaining to the *Calling of Special Stockholders' Meetings* of publicly-listed companies. To promote good governance and protection of minority investors and consistent with its regulatory powers under Section 179 (d) of the RCC, the SEC has allowed shareholders holding at least ten percent (10%) or more of the outstanding capital stock of a publicly-listed company ("Qualifying Shareholders") to call for a Special Stockholders' Meeting, subject to the requirements of Section 49 of the RCC (the "Call").

The Call must be in writing, signed by all Qualifying Shareholders and transmitted to the Corporate Secretary at least forty-five (45) days prior to the proposed date of the special meeting. It must clearly state the purpose, legitimate interest of the stockholders, and proposed agenda items.

The stockholders' rights are not without limitation, however. The Call cannot be used for purposes of removing a director, as such can only be made by the Corporate Secretary on order of the President, or upon written demand of the stockholders representing or holding at least a majority of the outstanding capital stock.[75] As to time, the proposed schedule of the requested Special Stockholders' Meeting generally cannot be within sixty (60) days from the previous meeting of the same nature and where the same matter was discussed. As to substance, the special meeting cannot be called if the proposed agenda covers the same matters discussed and resolved in a previous stockholders' meeting within the sixty (60) day holding-off period; involved matters to be covered in the next regular or special meeting scheduled no later than thirty (30) days from the date of the request; or matters that have already been discussed and resolved with finality in previous meetings.

The Board of Directors is given the authority to determine whether the objectives and conditions in the Call are consistent with the requirements of the said memorandum circular. If it determines the Call to be consistent with the memorandum circular, a notice to convene the Special Stockholders' Meeting at least seven (7) days prior to the proposed date of special meeting shall be issued in accordance with Sections 49 and 50 of the RCC and SEC Memorandum Circular No. 6, series of 2020. If found to be inconsistent, the

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[75] REV.CORP. CODE, sec. 27.

Board of Directors shall send a written notice to the requesting stockholders within twenty (20) days from receipt of the request, indicating that a meeting cannot be called due to their failure to comply with the requirements of the said memorandum circular, clearly setting forth the basis of such inconsistency.

In case of failure to respond to the request, or unjust refusal by the Board of Directors to call for the special meeting, the Qualifying Shareholder/s may avail of the remedy provided under paragraph 7 of Section 49 of the RCC. In such a situation, the SEC, upon petition of a stockholder or member on a showing of good cause therefor, may issue an order directing the petitioning stockholder or member to call a meeting of the corporation by giving proper notice required by the RCC or the by-laws. The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen from among themselves, a presiding officer. This remedy is without prejudice to the liability of the officer or agent of the corporation under Section 158 of the RCC for refusing to allow the exercise of the right.

It also bears emphasis that the remedy of filing a petition with the SEC under paragraph 7 of Section 49 and of proposing the holding of a special meeting under paragraph 5 of the same section are remedies available to all types of corporations (not just publicly-listed companies). Moreover, under the RCC, it is also available when the person authorized to call a meeting unjustly refuses to call a meeting and whenever for any cause, there is no person authorized to call a meeting, such as when the designated officers have resigned and the remaining directors are not authorized or sufficient to fill the vacancy or there is hold-over capacity for which replacement is no longer allowed, or not authorized to call a meeting in accordance with the by-laws.

Likewise significant to note is the power of the SEC to call a meeting under Section 25 of the RCC in case of non-holding of elections and no new date has been designated, or if the rescheduled election is likewise not held. In such case, the SEC, may, upon the application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election, summarily order that an election be held. The SEC shall likewise have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote. More importantly, under this provision, notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this Section 25. This exemption from the

quorum requirement would give real meaning to minority right whenever the controlling majority would attempt to defeat the remedy by the simple act of not attending/participating in the meeting called by the SEC. This is truly an empowerment of the minority rights and strengthening of the SEC's powers.

I. Shareholders' Right to Put Items in the Agenda

Closely connected with the right to propose a special meeting under Section 49 of the RCC is the right to include items in the agenda. This right is available to all types of corporations, but to emphasize the rights of stockholders in publicly-listed companies, the SEC, on 28 April 2020, issued Memorandum Circular No. 14, series of 2020 to allow minority investors holding at least five percent (5%) of the outstanding capital stock of a publicly-listed company to include items in the agenda prior to a regular or special stockholders' meeting but after filing of the Definitive Information Statement (DIS) with the SEC.

The Board of Directors, any officer or agent of the corporation who unjustly refuses to allow a shareholder or group of shareholders, duly qualified and holding the required percentage of outstanding shares of the corporation, to exercise his/her right to put items on the agenda will held liable under Section 158 of the RCC. Similar to the right to inspect corporate records, a corporation may interpose the defense that any shareholder exercising the right under this memorandum circular was not acting in good faith or for a legitimate purpose.

To reiterate, while the memorandum circular refers to publicly-listed companies, even stockholders or members of corporations which are not publicly listed have the right to propose items to be included in the agenda by virtue of Section 49 of the RCC.

IV. CORPORATE AND CIVIC RESPONSIBILITY

While corporate and civic responsibility has always been integral parts of corporations, the RCC has painstakingly emphasized this responsibility by expressly providing for provisions against the commission, participation, facilitation, and tolerance of graft and corrupt practices, securities violations, smuggling, tax evasion, money laundering, or other fraudulent or illegal acts.

A. Greater Accountability under the By-laws

Section 46 of the RCC promotes corporate and civic responsibility by providing that the by-laws may provide such other matters as may be necessary for the proper or convenient transaction of its corporate affairs for the promotion of good governance and anti-graft and corruption measures. A similar provision was not found in the CCP.

B. Additional Grounds for Involuntary Dissolution and Revocation of License

Section 138 on involuntary dissolution, aside from forfeiture of assets in favor of the national government, added the following grounds for dissolution: a) upon finding by final judgment that the corporation procured its incorporation through fraud; and (b) upon finding by final judgment that the corporation: (1) was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices; (2) committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew; and (3) repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

Section 151 does not spare foreign corporations as it provides for the revocation of license in cases of misrepresentation or failure to pay taxes, imposts, assessments or penalties, among others.

The SEC is also empowered to dissolve or impose sanctions on corporations, upon final court order, for committing, aiding in the commission of, or in any manner furthering securities violations, smuggling, tax evasion, money laundering, graft and corrupt practices, or other fraudulent or illegal acts.[76]

C. Investigations, Offenses and Penalties

In addition, Title XVI of the RCC now enumerates in detail the investigations, offenses, and penalties, including those relating to corporate and civic responsibility. Section 154 even provides that the SEC may publish its findings, orders, opinions, advisories, or information concerning any such violation, as may be relevant to the general public or to the parties concerned, subject to the provisions of the DPA, and other pertinent laws.

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[76] REV.CORP. CODE, sec. 179(k).

Aside from violations arising from unauthorized use of corporate name, violation of disqualification provision or the duty to maintain records, to allow their inspection or reproduction, or certification of incomplete, inaccurate, false or misleading statements of reports[77], the RCC also penalizes independent auditor collusion resulting to failure to provide fair and accurate presentation of the corporation's condition, obtaining corporate registration through fraud or assisting directly or indirectly therein, and fraudulent conduct of business, even imposing greater penalty when the violation is injurious or detrimental to the public[78].

Moreover, acting as intermediaries for graft and corrupt practices, or engaging intermediaries for the said practices, as well as tolerating the same, are also expressly penalized under Sections 166 to 168 of the RCC. These include the prima facie evidence of corporate liability under Section 166 whenever a corporation failed to install: (a) safeguards for the transparent and lawful delivery of services; and (b) policies, code of ethics, and procedures against graft and corruption when there is a finding that any of its directors, officers, employees, agents, or representatives are engaged in graft and corrupt practices. Whistleblowers are afforded protection under Section 169 of the RCC by penalizing any person who knowingly and with intent to retaliate, commits acts detrimental to a whistleblower.

V. STRENGTHEN POLICY AND REGULATORY CORPORATE FRAMEWORK

The amendments introduced in the RCC also bolstered the SEC's policy and regulatory corporate framework. Aside from providing for electronic filing systems for registration and reporting; imposing a requirement of reporting election, non-holding of election, and cessation from office; requiring the declaration/disclosure of beneficial ownership; and allowing the adoption of arbitration agreements as an additional dispute mechanism, the RCC also aligned the powers of the SEC with those provided for under the SRC, thus reinforcing and expanding the investigatory and regulatory powers of the SEC.

A. Electronic Filing

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[77] REV.CORP. CODE, secs. 159 to 162.
[78] REV.CORP. CODE, secs. 163 to 165.

The SEC is mandated to develop and implement an electronic filing and monitoring system, and to promulgate rules to facilitate and expedite, among others, corporate name reservation and registration, incorporation, submission of reports, notices, and documents required under the RCC, and sharing of pertinent information with other government agencies.[79] Before the effectivity of the RCC, the SEC launched its Company Registration System (CRS) in 2017 to fully automate and digitalize the pre-processing of corporations and partnerships, licensing of foreign corporations, amendments of the articles of incorporation and other corporate applications requiring SEC approval.[80]

Prior to the COVID-19 pandemic and imposition of Enhanced Community Quarantine (ECQ), the processing of applications for registration in accordance with the new provisions of the RCC was generally done manually by the Company Registration and Monitoring Department (CRMD) and the Extension Offices of the SEC.[81] Similarly, the submission of the General Information Sheet (GIS) in electronic format was suspended until further notice.[82]

But as the adage goes, necessity is the mother of invention. While the pandemic and ECQ restrictions halted normal activities and face-to-face transactions, the need to file Audited Financial Statements (AFS), GIS, Notices of Postponement of Annual Stockholders' Meeting, and various other submissions remained. The SEC-CRS continued to be in service[83], but SEC quickly supplemented this by establishing an interim online registration online system to facilitate application for registration of OPCs and corporations with 2-4 incorporators.[84] The SEC also released various memorandum circulars[85] and infographics on social media to guide the public as to the proper receiving email addresses for their various online submissions during the ECQ.

To support the shift to electronic means for company registration, the SEC allowed submission of AOI without notarization or consularization, provided that these are accompanied by a Certificate of Authentication signed by all

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[79] REV.CORP. CODE, sec. 180.
[80] Available at: http://www.sec.gov.ph/online-services/sec-company-registration-system/
[81] SEC Memo. Circ. No. 16, s. 2019, sec. 11.
[82] Securities and Exchange Commission, Memorandum Circular No. 15, series of 2019, sec. 12, July 26, 2019.
[83] SEC Notice dated 30 March 2020 re: Online Company Registration during the COVID-19 Pandemic. Retrieved from: http://www.sec.gov.ph/wp-content/uploads/2020/03/2020Notice_Online-Company-Registration_.pdf
[84] SEC Notice dated 08 April 2020 re: Online Registration System for One Person Corporations and Corporations with 2-4 Incorporators. Retrieved from: http://www.sec.gov.ph/wp-content/uploads/2020/04/2020NOTICE_OPC_234RegSystem.pdf
[85]Securities and Exchange Commission, Memorandum Circular Nos. 9 and 10, series of 2020.

incorporators in the form prescribed by the SEC.[86] Nonetheless, incorporators seem more inclined to the traditional way of submitting notarized AOI.

Through SEC Memorandum Circular No. 3, series of 2021[87] issued on 09 March 2021, the SEC launched its Online Submission Tool, an online facility for the submission of AFS, GIS, Sworn Statement for Foundations (SSF), General Form for Financial Statements (GFFS), Special Form for Financial Statement (SFFS) and other reportorial requirements. Registration in the OST is mandatory for all corporations submitting or accessing reports online beginning 15 March 2021 until the end of the year.

As with most new online facilities, the OST has faced both technical issues and a large volume of inquiries from corporate filers. Foreseeing such issues, the SEC established kiosks at SEC offices and other areas to provide technical assistance and facilitate over-the-counter submission for filers that have encountered problems during the enrollment and/or submission process.

B. Report of Election, Non-Holding of Election, and Cessation from Office

Previously, corporations were only required to report to the SEC on the election of directors, trustees and officers of the corporation. Under the RCC, even the non-holding of elections and the reasons therefor are to be reported to the SEC within thirty (30 days) from the scheduled election. Such report must specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date. In case the corporation does not designate a new election date, or the re-scheduled election is likewise not held, the SEC may summarily order that an election be held, upon application of a stockholder, member, director, or trustee and upon verification of the unjustified non-holding of the election.

Should a director, trustee, or officer die, resign or in any manner cease to hold office, the secretary, or the director, trustee, or officer of the corporation, or in case of death, the officer's heirs shall, within seven (7) days from knowledge thereof, report in writing such fact to the SEC.

C. Arbitration Clause

Under the RCC, the AOI or by-laws may now contain an arbitration agreement. The RCC provides that when such arbitration agreement is in

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[86] Securities and Exchange Commission, Memorandum Circular No. 16, series of 2020, April 29, 2020.
[87] Schedule and Procedure for the Filing of Annual Financial Statements, General Information Sheet and Other Covered Reports.

place, disputes between the corporation, its stockholders, or members, which arise from the implementation of the AOI or by laws, or from intra-corporate relations, shall be referred to arbitration.[88]

Arbitrators are to be appointed by a designated independent third party, and in case of such third party's failure to appoint, the SEC may appoint the arbitrators upon request of the parties. The RCC also provides that where there is an arbitration agreement in the AOI, by-laws or separate agreement, intra-corporate disputes filed with the Regional Trial Court (RTC) are to be dismissed before the termination of the pre-trial conference.

As of the writing of this article, the memorandum circular containing the guidelines on arbitration of intra-corporate disputes has not yet been finalized, although the draft thereof has already been made available to the public for comments. The draft guidelines provide for the following minimum provisions of arbitration agreements: (a) All arbitration agreements executed under the rules shall contain the following: 1. the number of arbitrators (e.g., one or three); 2. the designated independent third party who shall appoint the arbitrator or arbitrators; 3. the procedure for the appointment of the arbitrator or arbitrators; and 4. the period within which the arbitrator or arbitrators should be appointed by the designated independent third party. (b) Arbitrations arising from arbitration agreements that do not meet the foregoing minimum provisions shall proceed under the ADR Act and its implementing rules and regulations if the seat or place of arbitration is the Philippines, or under the relevant arbitration law if the seat or place of arbitration is outside the Philippines.

D. Beneficial Ownership Declaration

On 27 January 2021, the SEC issued Guidelines in Preventing the Misuse of Corporations for Illicit Activities Through Measures Designed to Promote Transparency of Beneficial Ownership[89] providing for mandatory disclosure of nominators, principals or persons on whose behalf one acts as director, trustee, or shareholder of corporations both applying for registration and existing. The required disclosure includes the full name, country of residence, nationality, tax identification number (TIN) or passport numbers of nominators or principals. In case the nominator or principal is a corporation, the corporate name, country of registration, names of incorporators and directors, beneficial owner, and TIN shall be similarly disclosed.

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[88] REV.CORP. CODE, sec. 181.

[89]Securities and Exchange Commission, Memorandum Circular No. 1, series of 2021, January 27, 2021.

The said Guidelines aim to check if the corporations are not organized or used to defeat public convenience, justify wrong, protect fraud, or defend crime or confuse legitimate issues. It also seeks to mitigate the risk of misuse of corporate vehicles for purposes contrary to law such as money laundering and terrorist financing arising from lack of transparency of beneficial ownership of such corporate vehicles.

The Grandfather Rule as discussed in Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation[90] is the accepted test in case of doubt as to the percentage of Filipino and foreign equity in a corporation engaged in a partly-nationalized enterprise. With the submission of Beneficial Ownership Transparency Declaration Forms, the information required to ascertain ultimate beneficial ownership are now readily available to the SEC, and misuse of corporate layering may also be easily ascertained.

Moreover, any possible mis-use of Filipino-nominees by unqualified foreign investors may also be discovered, or at the very least, prosecuted for non-declaration. The Guidelines, aside from stressing the administrative sanctions, also emphasized the criminal actions and liability under Title XVI of the RCC.

E. Certification of Audited Financial Statements

The RCC has made the substantial requirements relating to financial statements more specific. It is now required that financial statements to be furnished to requesting stockholders or members be in the form and substance of the financial reporting required by the SEC, instead of just the balance sheet and profit or loss statement.

Financial statements to be presented to stockholders or members in their regular meeting must be signed and certified in accordance with the rules that the SEC may prescribe. However, if the total assets or total liabilities of the corporation are less than six hundred thousand pesos (P600,000) or such other amount as may be determined appropriated by the Department of Finance, the financial statements may be certified under oath by the president and treasurer.[91]

F. The SEC's Powers, Functions and Jurisdiction

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[90] *Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation,* G.R. No. 195580, January 28, 2015.
[91] REV.CORP. CODE, sec. 74.

Some of the foremost objectives in overhauling the corporation code are to provide the SEC with powers aligned with the provisions of the SRC, to strengthen its oversight functions in order to deter abuses, fraud, and corruption, and to provide the administrative penalty and criminal liability for the commission of these offenses.

Aside from those already discussed, the RCC also provides for regulatory and visitorial powers under Sections 177 and 178 of the RCC, respectively. Under Section 177, the SEC has the power to require every corporation, domestic or foreign, doing business in the Philippines to submit various reportorial requirements, and place the corporation under delinquent status in case of failure to submit the reportorial requirements three (3) times, consecutively or intermittently, within a period of five (5) years. Under Section 178, the SEC shall exercise visitorial powers over all corporations, which powers shall include the examination and inspection of records, regulation and supervision of activities, enforcement of compliance, and imposition of sanctions in accordance with the RCC. Should the corporation, without justifiable cause, refuse or obstruct the SEC's exercise of its visitorial powers, the SEC may revoke its certificate of incorporation, without prejudice to the imposition of other penalties and sanctions under the RCC.

In addition, Section 175 fortifies the authority of the SEC to collect, retain, and use fees, fines, and other charges pursuant to the RCC and its rules and regulations. The said section provides for the use of the amount collected as a fund for SEC's modernization and to augment its operational expenses such as, but not limited to, capital outlay, increase in compensation and benefits comparable with prevailing rates in the private sector, reasonable employee allowance, employee health care services, and other insurance, employee career advancement and professionalization, legal assistance, seminars, and other professional fees.

Consistent with the SRC and Presidential Decree No. 902-A, Section 179 of the RCC enumerates the powers, functions, and jurisdiction of the SEC, to wit:

1. Exercise supervision and jurisdiction over all corporations and persons acting on their behalf, except as otherwise provided under the RCC;

2. Pursuant to Presidential Decree 902-A, retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution. The SEC shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

3. Impose sanctions for the violation of the RCC, its implementing rules, and orders of the SEC;
4. Promote corporate governance and the protection of minority investors, through, among others, the issuance of rules and regulations consistent with international best practices;
5. Issue opinions to clarify the application of laws, rules, and regulations;
6. Issue cease and desist orders *ex parte* to prevent imminent fraud or injury to the public;
7. Hold corporations in direct and indirect contempt;
8. Issue subpoena duces tecum and summon witnesses to appear in proceedings before the SEC;
9. In appropriate cases, order the examination, search and seizure of documents, papers, files and records, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases, subject to the provisions of existing laws;
10. Suspend or revoke the certificate of incorporation after proper notice and hearing;
11. Dissolve or impose sanctions on corporations, upon final court order, for committing, aiding in the commission of, or in any manner furthering securities violations, smuggling, tax evasion, money laundering, graft and corrupt practices, or other fraudulent or illegal acts;
12. Issue writs of execution and attachment to enforce payment of fees, administrative fines, and other dues collectible under this RCC;
13. Prescribe the number of independent directors and the minimum criteria in determining the independence of a director;
14. Impose or recommend new modes by which a stockholder, member, director, or trustee may attend meetings or cast their votes, as technology may allow, taking into account the company's scale, number of shareholders or members, structure, and other factors consistent with the basic right of corporate suffrage;
15. Formulate and enforce standards, guidelines, policies, rules, and regulations to carry out the provisions of the RCC; and

16. Exercise such other powers provided by law or those, which may be necessary or incidental to carrying out, the powers expressly granted to the SEC.

The same section also provides that in imposing penalties and additional monitoring and supervision requirements, the SEC shall take into consideration the size, nature of the business, and capacity of the corporation. It also emphasized the rule that no court below the Court of Appeals shall have jurisdiction to issue a restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy that directly or indirectly interferes with the exercise of the powers, duties and responsibilities of the SEC that falls exclusively within its jurisdiction.

The SEC is likewise empowered to:

1. Investigate an alleged violation of the RCC, or any rule, regulation, or order of the SEC[92];
2. In relation to the proceedings or investigations, the SEC, through its designated officer, may administer oaths and affirmations, issue subpoena and subpoena duces tecum, take testimony in any inquiry or investigation, and may perform other acts necessary to the proceedings or to the investigation[93];
3. SEC has reasonable basis to believe that a person has violated, or is about to violate, the RCC, or any rule, regulation, or order of the SEC, it may direct such person to desist from committing the act constituting the violation. The SEC may issue a cease-and-desist order *ex parte* to enjoin an act or practice which is fraudulent or can be reasonably expected to cause significant, imminent, and irreparable danger or injury to public safety or welfare. The *ex parte* order shall be valid for a maximum period of twenty (20) days, without prejudice to the order being made permanent after due notice and hearing. Thereafter, the SEC may proceed administratively against such person in accordance with Section 158 of the RCC, and/or transmit evidence to the Department of Justice for preliminary investigation or criminal prosecution and/or initiate criminal prosecution for any violation of the RCC, or any rule or regulation; and
4. Any person who, without justifiable cause, fails or refuses to comply with any lawful order, decision, or subpoena issued by the

[92] REV.CORP. CODE, sec. 154.
[93] REV.CORP. CODE, sec. 155.

> SEC shall, after due notice and hearing, be held in contempt and fined in an amount not exceeding Thirty thousand pesos (P30,000.00). When the refusal amounts to clear and open defiance of the SEC's order, decision, or subpoena, the SEC may impose a daily fine of One thousand pesos (P1,000.00) until the order, decision, or subpoena is complied with.

Relative to the administrative sanctions under Section 158, if, after due notice and hearing, the SEC finds that any provision of the RCC, or any rules or regulations, or any of the SEC's orders has been violated, the SEC may impose any or all of the following sanctions, taking into consideration the extent of participation, nature, effects, frequency, and seriousness of the violation:

1. Imposition of a fine ranging from Five thousand pesos (P5,000.00) to Two million pesos (P2,000,000.00), and not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00);
2. Issuance of a permanent cease-and-desist order;
3. Suspension or revocation of the certificate of incorporation; and
4. Dissolution of the corporation and forfeiture of its assets under the conditions in Title XIV of the RCC.

With respect to the potential criminal offenses, the SEC may transmit evidence to the Department of Justice for preliminary investigation or criminal prosecution and/or initiate criminal prosecution for any violation of the RCC, or any rule or regulation, specifically those provided under Sections 159 to 170 of the RCC.

It is worthy to stress that violations of any of the other provisions of the RCC or its amendments not otherwise specifically penalized therein under Section 170 shall be punished by a fine of not less than Ten thousand pesos (P10,000.00) but not more than One million pesos (P1,000,000.00). If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the SEC. Such dissolution shall not preclude the institution of appropriate action against the director, trustee, or officer of the corporation responsible for said violation and nothing in Section 170 shall be construed to repeal the other causes for dissolution of a corporation provided in the RCC. Moreover, liability for any of the foregoing offenses shall be separate from any other administrative, civil, or criminal liability under the RCC and other laws.

It is also provided that if the offender is a corporation, the penalty may, at the discretion of the court, be imposed upon such corporation and/or upon its directors, trustees, stockholders, members, officers, or employees responsible for the violation or indispensable to its commission[94]. Last, but not the least, anyone who shall aid, abet, counsel, command, induce, or procure any violation of the RCC, or any rule, regulation, or order of the SEC shall be punished with a fine not exceeding that imposed on the principal offenders, at the discretion of the Court, after taking into account their participation in the offense.

VI. CONCLUSION

The passage of the RCC has indeed given hope to the Philippines to improve the ease of doing business and to strengthen the framework and governance towards better protection of minority rights and good corporate governance. Be that as it may, just like many things with potential, the realization of these objectives rest upon the implementation and the will of the people to abide by it.

The policies that would enhance the ease of doing business in the Philippines are clearly set forth in the RCC and the relative issuances of the SEC. These are intricately connected with the enhanced corporate and civic responsibility imposed upon corporations and their responsible officers and agents. It takes a shared partnership and accountability between the corporations and the people composing the said corporations on one hand, and the government on the other hand, to make sure that the promulgated policies would really pave the way towards a more compliant, cost-effective, and efficient business environment.

With respect to prioritization of corporate and stockholder protection, the key is to respect that while the majority rules, the same shall not defeat transparent, efficient, and accountable governance by the majority. While the minority might not have an opportunity to overrule the majority, their right to fair share in the returns and to be fully and timely informed about important transactions and decisions must not be circumvented. After all, opposition and deliberations give rise to a more-informed decision-making process.

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[94] REV.CORP. CODE, sec. 171.

Finally, while the SEC seems to be on the right track in strengthening its oversight over corporations and in implementing measures which will further ensure compliance and early detection of deviations and violations, one must not lose sight that the policy and regulatory framework must consider the different resources, capabilities, and bandwidth of and available to the governed corporations. While we seek to prevent fraudulent, deceptive, and abusive activities, the compliance to relatively new procedures and processes must be coupled with sufficient informative materials, adequate time to comply, and available manpower from the SEC to respond to the inquiries and clarifications of the public. The SEC is obviously doing its best to meet these needs, but it is also submitted that quite a number of these changes were implemented and required to be complied by corporations of all sizes, during this difficult and challenging times of the pandemic.

All told, in order to see real tangible results, all stakeholders must be willing to perform their respective roles. Stockholders must invest in legitimate undertakings and must be ready to face the risks and rewards of the enterprise. There should be no short-cuts nor cutting corners from the part of the governed so that there is no opportunity for abuse, fraud and graft and corrupt practices. As I have often times shared to my students, if something is too good to be true, then it is either not good or not true. Each of us must faithfully and diligently discharge our individual duty in order for the entire enterprise to be successful, compliant, and inclusive.

The Board of Directors as the voted representatives charged with the exercise of corporate powers, conduct of the business and control of the properties must exercise business judgment bearing in mind their duties of obedience, loyalty, and diligence. Corporate officers must discharge their functions consistent with the authority granted to them and with the best interest of the corporation in mind. On the other hand, the State and its regulatory agencies are expected to balance the interests of the majority against the minority, as well as to promote public interests and guard the smaller players against the ambitious plays of the big ones.

And for us in the legal profession, may we continue to guide our clients towards good corporate governance, fair play, and equity. Grounded by our moral anchors and motivated by our ethical responsibility, may we serve as instruments to the realization of the noble purposes of the RCC.