



ICGN

International Corporate Governance Network

18 October 2016

To: Securities Commission of the Philippines

Securities and Exchange Commission
EDSA, Greenhills
Mandaluyong City
Republic of the Philippines

By email: 2016cgcode@gmail.com

**Regarding: DRAFT 2016 CODE OF CORPORATE GOVERNANCE FOR
PUBLICLY-LISTED COMPANIES**

The International Corporate Governance Network (ICGN) is pleased to provide feedback to the Securities and Exchange Commission (SEC) of the Philippines with regard to the Draft 2016 Code of Corporate Governance for Publicly-Listed Companies. ICGN was founded in 1995 as an investor led membership organisation; our members include institutional investors with global assets under management in excess of US\$26 trillion, based in 46 countries around the world.

ICGN's mission is to promote effective standards of governance and investor stewardship to advance efficient markets and sustainable economies world-wide. We do this by influencing public policy, connecting corporate governance professionals at international meetings and by informing debate on matters of corporate governance and responsible investment. Accordingly, ICGN members offer a vast source of practical knowledge and experience with regard to governance and investment issues to serve the global investment community. For more information on the ICGN, please visit www.icgn.org In particular, ICGN's *Global Governance Principles* and its *Global Stewardship Principles* serve as core policy foundation documents reflecting ICGN's policy positioning relating to corporate governance and stewardship, respectively.

ICGN would like to welcome this new Draft Code for the Philippines and congratulate the SEC on its introduction; it represents a positive progression from the second code which had been revised and launched in 2009. This positive progression builds from the very good Corporate Governance Blueprint 2015, also published by the SEC.

While we will not comment on every aspect of the Draft Code, we would like to make a few comments that draw from both the Draft Code, but also from feedback from other institutional investors investing in Filipino companies.

- The Draft Code and the Blueprint provide a good policy foundation for ongoing improvements for governance. In particular we see the Blueprint frame governance issues in a broader societal context, which we see in the Draft Code in its focus on stakeholders and establishing a core principle

relating to ethical conduct. This is a positive development, and in line with ICGN's own governance principles.

- Principle 12 relates to internal control and risk management. We view this issue as coming under the broad purview of what boards should be accountable for, and we would question why this is listed as a stand alone category and not as a principle under Board Governance Responsibilities.
- In Principle 5.1 relating to board independence, we are pleased to see the independence standards strengthening from the previous code. While three (or 1/3) independent board directors is moving in the right direction – and may be appropriate for some controlled companies-- the code does not address companies that might be widely held, in which case a majority independence requirement is the norm. While dispersed share ownership is not the Philippine model, it is important to appreciate that majority board independence is regarded highly in many jurisdictions globally as a best practice. So there may be scope for greater independence standards as the Code evolves in the future.
- We have heard feedback from some in the Philippine market that even nominally independent directors often do not act with appropriate independence of mind. This is a challenge in many markets where the importance of independence is building in a number of governance codes. To many investors this means that in addition to encouraging more independent directors there is also scope for caution about the degree of this independence in practice and the ability of independent directors to provide effective oversight and protection of minority shareholder rights. This also may reflect what the SEC has publicly referred to as the “closed mind set” of some companies, and is a major concern for minority institutional investors who seek a robust and independent board as a first line of defence.
- Given ongoing concerns about the effectiveness of independent board representation in the Philippines, investors will argue that this should be offset with stronger shareholder rights. In particular we would like to identify three areas of potential concern to minority shareholders relating to shareholders' rights:
 - **Related party transactions** over a defined materiality threshold should be subject to a vote of minority shareholders, requiring approval by the majority of minority shareholders.
 - **Pre-emption rights** should prevent excessive dilution on new capital issuances
 - **Differential ownership rights**, voting rights in particular, should be strongly discouraged, if not avoided. It is a means to entrench controlling owners and erode accountability to minority shareholders.

We believe that including these points in a company's constitution or articles of association will contribute to a positive strengthening of

shareholder rights, and can help to offset concerns about the potentially divergent agendas between controlling and minority shareholders.

- In Recommendation 5.2 (d) we note that there is a 2% ownership threshold for triggering lack of independence for minority shareholders. While the spirit of promoting independence is laudable, we believe that such a threshold may be too low in practical terms, and is far from a holding level with any degree of control; a threshold this low could discourage institutional shareholders from engaging with controlling investors as an independent voice on behalf of minority investors.

Thank you for the opportunity to provide comments on your consultation relating to strengthening corporate governance in the Philippines. We are pleased that ICGN Policy Director George Dallas was recently able to present the ICGN Global Stewardship Principles to the investor and director conferences in Manila organised by the Institute of Corporate Directors. That visit provided a much better understanding of the current situation in the Philippines relating to governance matters.

Should you wish to discuss our comments further, please contact George Dallas by email at george.dallas@icgn.org

Yours faithfully,
Erik Breen
Chairman, ICGN Board

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