

# BEST PRACTICES IN CORPORATE HOUSEKEEPING

## The Experts' Guide for Board Directors & Lawyers On How to be an Effective Corporate Secretary

Thursday, 9:00 am to 5:00pm, May 17, 2018 (Day 1 of 2)  
Friday, 10:00 am to 2:30pm, May 18, 2018 (Day 2 of 2)  
EDSA Shangri-La Hotel, Mandaluyong City, Philippines

### COURSE OUTLINE

#### **DAY 1**

**9:00 AM TO 5:00 PM**

**FIRST LECTURER: ATTY. TRISTAN A. CATINDIG**

#### **1. OVERVIEW OF LECTURE AND SEMINAR MATERIALS**

- 1.1 Speakers and scope of each lecture
- 1.2 For whom are the lectures?
- 1.3 When and how do you use the lecture materials?

#### **2. CORPORATE HOUSEKEEPING AND RISK MANAGEMENT**

- 2.1 What is corporate housekeeping?
- 2.2 Principal areas of housekeeping services
- 2.3 Corporate housekeeping as risk management
- 2.4 Concept of risk
- 2.5 Concept of risk management
- 2.6 Methods of managing risks
- 2.7 Functional areas of risk

#### **3. MANAGING RISKS AS CORPORATE SECRETARY AND STOCK TRANSFER AGENT**

- 3.1 Basic qualifications and disqualifications of a corporate secretary (Secs. 25 and 27, Corporation Code)
- 3.2 General responsibilities of a Corporate Secretary
- 3.3 Organization and keeping of records
  - 3.3.1 Filing system
  - 3.3.2 Stock and transfer book
- 3.4 Qualifications and election of directors
  - 3.4.1 Qualifications under the Corporation Code, By-laws, and the law(s) applicable to the business of the corporation
  - 3.4.2 Election of directors
- 3.5 Qualifications and election of officers
  - 3.5.1 Qualifications under the Corporation Code, By-laws, and the law(s) applicable to the business of the corporation
  - 3.5.2 Election of officers
- 3.6 Organization and conduct of meetings
  - 3.6.1 Frequency of meetings [Sec. 53, Corp Code]
  - 3.6.2 Requirement of actual meeting
  - 3.6.3 Date, place, and time
  - 3.6.4 Notice
  - 3.6.5 Agenda
  - 3.6.6 Proxies
  - 3.6.7 Quorum [Secs. 47 and 52, CorpCode]
  - 3.6.8 Attendance of directors
  - 3.6.9 Board meeting quorum, voting rules, and exceptions
  - 3.6.9 Resolutions [Secs. 74, CorpCode]
  - 3.6.10 Recording and preparation of the minutes

- 3.6.11 Signing and distribution
- 3.7 Certifications as to corporate actions
- 3.8 Preparation and filing of General Information Sheet with the SEC
- 3.9 Consequences of non-filing or late filing of GIS
- 3.9 Issuance of shares
- 3.10 Issuance of certificate of stock
- 3.11 Lost, stolen, or destroyed stock certificate
- 3.12 Delinquent shares

#### **4. MANAGING RISKS AS GENERAL COUNSEL**

- 4.1 General risks
  - 4.1.1 Deliberate or unintentional omission by client or employer of facts and other information
  - 4.1.2 Acceptance without inquiry of facts and other information proffered by client or employer
  - 4.1.3 Failure to anticipate, analyze, and research problem properly
  - 4.1.5 Failure to provide opinion and other deliverables on time
  - 4.1.6 Sending a request for opinion to a government agency or entity without first determining probable answer
- 4.2 Common corporate law risks
  - 4.2.1 Non-inclusion of business name(s) and trade name(s) in Articles of Incorporation [SEC Memorandum Circular No. 12 dated December 23, 2008]
  - 4.2.2 Improper acquisition, disposition, lease, or encumbrance of corporate properties [Sec. 36(7) and Sec. 40, Corporation Code]
  - 4.2.3 Improper acquisition of own shares [Sec. 41, Corporation Code]
  - 4.2.4 Improper investment of corporate funds in another corporation or business [Sec. 42, Corporation Code]
  - 4.2.5 Unauthorized retention of surplus profits [Sec. 43, Corporation Code]
  - 4.2.6 Improper declaration of dividends [Sec. 43, Corporation Code]

- 4.2.7 Unlawful distribution or impairment of capital [*Philippine Trust Company* vs. *Marciano Rivera*, G.R. No. L-19761, January 29, 1923; Sec. 122, last paragraph, Corporation Code]

#### **5. MANAGING RISKS AS TRANSACTION COUNSEL**

- 5.1 Risks in negotiating contracts
  - 5.1.1 Lack of preparation
  - 5.1.2 Inexperience
- 5.2 Risks in reviewing contracts
  - 5.2.1 Lack of time and preparation
  - 5.2.2 Failure to identify source of contract to be reviewed
  - 5.2.3 Snakes in the grass
    - (a) Automatic renewal
    - (b) Time is of the essence
    - (c) Best efforts
    - (d) Sole determination
    - (e) Satisfactory
- 5.3 Risks in drafting contracts
  - 5.3.1 Lack of experience
  - 5.3.2 Failure to consider time element
  - 5.3.3 Blind copying of an existing contract
  - 5.3.4 Blind copying of a foreign-sourced contract
  - 5.3.5 Failure to identify, date, and mark draft
  - 5.3.6 Failure to define terms properly
  - 5.3.7 Blind use of boilerplate clauses
  - 5.3.8 Improving delivery of contract drafting services

## 6. MANAGING RISKS AS A COVERED PERSON

- 6.1 Lawyers and law firms as covered persons under RA 9160 (2001), otherwise known as the Anti-Money Laundering Act, as amended by RA 9194 (2003), RA 10167 (2012), and RA 10365 (2013)
  - 6.1.2 Law firms as covered persons
  - 6.1.3 Lawyers as covered persons; exclusion
- 6.2 Duties of law firms and lawyers as covered persons
  - 6.2.1 Client identification and verification
  - 6.2.2 Record keeping and retention
  - 6.2.3 Reporting of covered and suspicious transactions; exclusion
- 6.3 Some key money laundering and terrorist financing methods, techniques, schemes and instruments
  - 6.2.1 Corruption (e.g., bribery) of public and private persons
  - 6.2.2 Structuring (smurfing)
  - 6.2.3 Purchase of portable valuable commodities (e.g., gems, precious metals)
  - 6.2.4 Purchase of valuable assets (e.g., real estate, race horses and vehicles)
  - 6.2.5 Identity fraud/false identification
  - 6.2.6 Use of shell companies/corporations
  - 6.2.7 Use of offshore banks/businesses
  - 6.2.8 Use of services of gatekeepers (e.g., lawyers, accountants, brokers, etc.)
  - 6.2.9 Use of nominees, trusts, family members, third parties, etc.

### DAY 2

**10:00 AM TO 2:30 PM**

**SECOND LECTURER: ATTY. ADRIAN S. BUSTOS**

**The Corporate Secretary of a Reporting Company**

## I. Preliminary Matter -- Coverage

- A. Registered Company
- B. Public Company (SEC Cir 5 S.2005)
- C. Listed Company
- D. Exceptions: 17-EX

## II. The Corporate Secretary: Qualifications and Functions

- A. In General
  - 1. Statutory Provisions
  - 2. SEC Issuances
- B. Specific Roles vis-à-vis Reporting Companies
  - 1. Monitoring of corporate actions/Reporting obligations
    - a. The Corporate Secretary as Compliance Officer/CIO
      - i. Must be aware of all corporate activities.
      - ii. Advise listed company of disclosure/reporting obligations relative to significant corporate activities.
      - iii. Ensure compliance with disclosure/reporting obligations.
    - b. Disclosure/Regular Reporting Obligations
      - i. Who are covered?
        - aa. Listed company
        - bb. Directors and Officers of listed company
      - ii. Events requiring prompt and immediate disclosure by the listed company
        - aa. Under the SRC Rules [SEC Form 17-C]
          - (1) changes in control
          - (2) acquisition/disposition of assets
          - (3) change in certifying accountant
          - (4) resignation/removal/election of directors or officers
          - (5) legal proceedings
          - (6) changes in securities
          - (7) defaults upon senior securities
          - (8) change in fiscal year
          - (9) other events
        - bb. Under the PSE Revised Disclosure Rules
          - (1) changes in control
          - (2) filing of legal proceedings
          - (3) changes in corporate purpose
          - (4) resignation/removal of directors, officers, or senior management

- (5) decisions to carry out extra-ordinary investments
- (6) Material Information
- (7) Clarification of News Reports
- (8) Websites, Others
- iii. Periodic Reports
  - aa. Monthly Reports
    - (1) Statement of Changes in beneficial ownership on SEC Form 23-B
    - (2) Monthly Report on number of shareholders
    - (3) Monthly Report on foreign ownership
  - bb. Quarterly Reports
    - (1) Quarterly Financial Report on SEC Form 17-Q
    - (2) Quarterly Submission of List of Top 100 Shareholders
  - cc. Annual Reports
    - (1) Annual Certification on extent of compliance with Manual on Corporate Governance
    - (2) Annual Certification as to attendance of directors in Board meetings
    - (3) Annual Report on SEC Form 17-A
    - (4) General Information Sheet
    - (5) Audited Financial Statements
- iv. Other Non-Recurring Reports
  - aa. Initial Beneficial Ownership Report on SEC Form 23-A
  - bb. Report of 5% Beneficial Ownership on SEC Form 18-A or 18-AS
  - cc. Information Statement on SEC Form 20-IS
  - dd. Notice of Inability to file Annual or Quarterly Report
  - ee. Submission of list of stockholders entitled to notice and vote at a stockholders' meeting
  - ff. Tender Offer Notice
  - gg. Notice of Exemption (Exempt Securities/Transactions)
  - hh. Dividend Declarations

- 2. Monitoring Compliance with other Legal Requirements
  - a. Qualifications/Disqualifications of Directors (SRC Rule 38/ Code of Corp Governance)
    - i. Regular Directors
    - ii. Independent Directors
  - b. Attendance in Corporate Governance Seminars

Seminar Contact Person:  
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