



CHARTER OF THE BOARD OF DIRECTORS

This Charter of the Board of Directors (the “Board Charter”) sets out the purpose, membership and qualifications, structure and operations, duties and responsibilities of the Board of Directors (the “Board”) of **San Miguel Food and Beverage, Inc.** (the “Corporation”) and the procedures which guide the conduct of its functions.

1. PURPOSE

This Board Charter aims to formalize and clearly state the roles, responsibilities and accountabilities of the Board in carrying out its fiduciary duties. This Board Charter shall serve as a guide to the directors in the performance and discharge of their functions and responsibilities, as well as to set the standards for evaluating the performance of the Board.

2. POWERS, DUTIES AND RESPONSIBILITIES OF THE BOARD

2.1 Powers of the Board

Under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines (the “RCC”), the Board of Directors shall exercise the corporate powers, conduct all business, and control all properties of the corporation.¹ Pursuant to the By-laws of the Corporation, as amended to date (the “By-laws”) and in accordance with the laws of the Republic of the Philippines concerning corporations, the stock, the property and all affairs of the Corporation shall be exclusively managed by and controlled by the Board of Directors, at least two of whom shall be residents of the Philippines and all of whom shall be stockholders of record, and who shall be elected by a plurality vote of the subscribed capital stock at the annual stockholders’ meeting for a term of one (1) year and until the election and qualification of their successors.² The Board shall have all such powers as may be exercised by the Corporation, subject to the provisions of applicable law, the Articles of Incorporation, and the Bylaws; provided however that, no corporate policies, decisions or actions shall be taken by the Board of Directors, or by the Executive Committee or any other Committee of the Board without the vote of at least two-third (2/3) of the entire membership of the Board, the Executive or other Committee of the Board on any matters not in furtherance of the businesses currently carried on by the Corporation.³

¹ Section 22, RCC.

² Article II, Section 1, By-laws.

³ Article II, Section 3, By-laws.

2.2 General Responsibilities of the Board

The Corporation's Manual on Corporate Governance, as amended to date (the "Manual"), sets out the general responsibilities of the Board of Directors⁴, as follows:

- (a) Each member of the Board shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the Corporation and all shareholders.
- (b) The Board is responsible for formulating the Corporation's vision, mission, policies and procedures that shall guide its activities, including the means to effectively monitor management's performance.
- (c) The Board shall oversee the development of and approve the Corporation's business objectives and strategy, and monitor their implementation, in order to sustain the Corporation's long-term viability and strength.
- (d) The Board shall conduct itself with utmost honesty and integrity in the discharge of its duties, functions and responsibilities.
- (e) To show full commitment to the Corporation, each director shall devote the time and attention necessary to properly and effectively perform his duties and responsibilities, including sufficient time to be familiar with the Corporation's business.
- (f) A director's office is one of trust and confidence. Each member of the Board shall act in a manner characterized by transparency, accountability and fairness, and in the best interest of the Corporation. He should exercise leadership, prudence and integrity in directing the Corporation towards sustained progress.
- (g) Members of the Board are duty-bound to apply high ethical standards, taking into account the interests of all stakeholders.

2.3 Specific Duties and Functions of the Board

In order to ensure a high standard of best practice for the Corporation, its stockholders and other stakeholders, the following are the specific duties and functions of the Board as set out in the Manual⁵:

- (a) Implement a process of selection to ensure a mix of competent directors and officers who can add value and contribute independent judgment to the formulation of sound corporate strategies and policies;
- (b) Appoint competent, professional, honest and highly-motivated management officers and adopt an effective succession planning program for key officers and management to ensure growth

⁴ Section 2.2.1.1, Manual.

⁵ Section 2.2.1.2, Manual.

- and a continued increase in the shareholders' value. The succession planning program should include adopting a policy on the retirement age for officers as part of management succession and to promote dynamism in the Corporation;
- (c) Align the remuneration of key officers and Board members with the long-term interests of the Corporation. In doing so, the Board of Directors shall formulate and adopt a policy specifying the relationship between remuneration and performance. Further, no director will participate in discussions or deliberations involving his own remuneration;
 - (d) Provide sound strategic policies and guidelines on major capital expenditures and other programs to sustain the Corporation's long-term viability and strength, and periodically evaluate and monitor the implementation of such policies and strategies;
 - (e) Ensure that the Corporation complies with all relevant laws, regulations and best business practices;
 - (f) Identify the Corporation's stakeholders in the community in which it operates or are directly affected by its operations, and formulate corporate disclosure policies and procedures to ensure comprehensive, accurate, reliable, timely and effective communication and maintaining relations with the Corporation's shareholders and other stakeholders, as well as agencies regulating the Corporation, in a manner that gives a fair and complete picture of the Corporation's financial condition, results and business operations;
 - (g) Establish and maintain an effective investor relations program that will keep the Corporation's shareholders and stakeholders informed of important developments in the Corporation. If feasible, the Corporation's Chief Finance Officer shall exercise oversight responsibility over this program;
 - (h) Adopt a system of internal checks and balances, and to review regularly the effectiveness thereof;
 - (i) Adopt a Code of Business Conduct and Ethics, which will provide standards for professional and ethical behavior, as well as articulate acceptable and unacceptable conduct and practices in internal and external dealings. The Code shall be properly disseminated to the Board of Directors, senior management and employees. It shall also be disclosed and made available to the public through the Corporation's website;
 - (j) Ensure the proper and efficient implementation and monitoring of compliance with the Code of Business Conduct and Ethics, as well as internal policies;
 - (k) Identify key risk areas and key performance indicators and monitor these factors with due diligence;
 - (l) Provide stockholders and other stakeholders with access to a balanced and comprehensible assessment of the Corporation's performance, position and prospects on a quarterly basis,

including interim and other reports on matters that could adversely affect its business, as well as reports to regulators that are required by law;

- (m) Properly discharge Board functions by meeting regularly or at such times and frequency as may be needed. Independent views during Board meetings shall be given due consideration. All such meetings shall be duly minuted;
- (n) Formulate and implement policies and procedures that would ensure the integrity and transparency of related party⁶ transactions (“RPTs”)⁷ between and among the Corporation and a related party as may be identified, reviewed and updated by the Board on a periodic basis (i.e., its parent company, joint ventures, subsidiaries, associates, affiliates, major shareholders, officers and directors, including their spouses, children and dependent siblings and parents, and of interlocking director relationships by members of the Board), and other unusual or infrequently occurring transactions, particularly those that pass certain thresholds of materiality, which policies and procedures should include the appropriate review and approval of material or significant RPTs as well as the write-off of material exposures to related parties, which guarantee fairness and transparency of the transactions, encompassing all entities within the group and taking into account their size, structure, risk profile and complexity of operations;⁸
- (o) Keep Board authority within the powers of the institution as prescribed in the Corporation’s Articles of Incorporation, By-laws and in existing laws, rules and regulations;
- (p) Encourage use of alternative modes of dispute resolution that can amicably settle conflicts or differences between the Corporation and its shareholders or third parties, including regulatory agencies;
- (q) Constitute an Audit Committee and such other committees it deems necessary to assist the Board of Directors in the performance of its duties and responsibilities; and
- (r) Appoint a Compliance Officer as provided in the Manual. In the absence of an appointment by the Board of Directors, the Corporate Secretary, preferably a lawyer, shall act as Compliance Officer.

2.4 Other Duties and Functions of the Board

⁶ A related party includes the company’s subsidiaries, as well as affiliates and any party (including their subsidiaries, affiliates and special purpose entities), that the company exerts direct or indirect control over or that exerts direct or indirect control over the company, the company’s directors, officers, shareholders and related interests, and their close family members, as well as corresponding persons in affiliated companies. A related party also includes such other person or juridical entity whose interest may pose a potential conflict with the interest of the company.

⁷ Related party transactions involve a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. RPTs should be interpreted broadly to include not only transactions that are entered into with related parties, but also outstanding transactions that are entered into with an unrelated party that subsequently becomes a related party.

⁸ See also Related Party Transactions Policy of the Corporation issued pursuant to SEC Memorandum Circular No. 10, Series of 2019.

(a) Recommendation on the Appointment of External Auditor

The Board, after consultations with the Audit Committee, should recommend the external auditor (which should be duly accredited by the SEC) for selection and appointment by the shareholders of the Corporation.⁹

(b) Appointment of the Chief Audit Executive or Internal Audit Group Head

The Board should appoint the Chief Audit Executive or Internal Audit Group Head who shall head the Internal Audit Group which shall perform the independent internal audit function.¹⁰

(c) Dissemination of the Manual

All directors, executives, division and department heads are tasked to ensure the thorough dissemination of the Manual to all employees and related third parties, and to likewise enjoin compliance in the process.¹¹

(d) Appointment of Independent Party for Proposed Acquisition or Disposal of Assets

In evaluating the fairness of the transaction price in a proposed acquisition or disposal of assets, an independent party shall be appointed by the Board of the offeree company.¹²

(e) Disclosure of Dealings

All directors and officers shall disclose to the Corporation any dealings in the Corporation's shares within three (3) business days.¹³

(f) Commitment to Respect Rights of Investors/Minority Interests

The Board is committed to respect the rights of the shareholders and minority interests.¹⁴

(g) Transparency in Shareholders' Meetings

The Board should be transparent and fair in the conduct of the annual and special stockholders' meetings of the Corporation.¹⁵

(h) Promotion of Shareholders' Rights

It shall be the duty of the directors to promote shareholder rights, remove impediments to the exercise of shareholders' rights and allow possibilities to seek redress for violation of their rights. They shall encourage the exercise of shareholders' voting rights and the solution

⁹ Section 2.2.5.2, Manual.

¹⁰ Section 2.2.6.1, Manual.

¹¹ Section 3.4,
Manual.
¹² Section 4.8,
Manual.
¹³ Section 4.2,
Manual.
¹⁴ Section 5.1.1,
Manual.
¹⁵

5.1.2.4, Manual.

of collective action problems through appropriate mechanisms. They shall be instrumental in removing excessive costs and other administrative or practical impediments to shareholders participating in meetings and/or voting in person. The directors shall pave the way for the electronic filing and distribution of shareholder information necessary to make informed decisions subject to legal constraints.⁹

(i) Identification of Stakeholders

The Board shall identify the Corporation's various stakeholders and promote cooperation between them and the Corporation in creating wealth, growth and sustainability. Stakeholders in corporate governance include, but are not limited to, customers, employees, suppliers, shareholders, investors, creditors, the community the Corporation operates in, society, the government, regulators, competitors, external auditors, among others.¹⁰

(j) Whistle-blowing Policy

The Corporation shall establish and maintain a whistleblowing policy that allows employees to freely communicate their concerns about illegal or unethical practices, without fear of retaliation and to have direct access to a unit tasked to handle whistleblowing concerns. The Board shall be conscientious in establishing the framework, as well as in supervising and ensuring its enforcement.¹¹

2.5 Board Committees

Under the By-laws of the Corporation, the Board of Directors is authorized to create an Executive Committee to help and assist the officers of the Corporation in the management and direction of the affairs of the Corporation, as well as to create such other committees, which may be composed of directors or such other persons as the Board may deem advisable under the circumstances, all of whom shall be appointed by a majority of the Board. The Board of Directors may furthermore delegate to the Executive Committee or to any of the other committees all its powers, authority and duties, subject only to such limitations as the laws of the Philippines may impose.¹²

⁹ Section 5.1.8, Manual.

¹⁰ Section 5.2.1, Manual.

¹¹ Section 5.2.7, Manual.

¹² Article II, Section 4, By-laws.

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Accordingly, the Board shall establish the following Committees, with duties and functions provided in the Manual. Each Committee shall report regularly to the Board of Directors. All established Committees shall have Committee Charters stating in plain terms their respective purposes, memberships, structures, operations, reporting processes, resources and other relevant information. The Charters shall provide the standards for evaluating the performance of the Committees and be fully disclosed on the Corporation's website.¹³

(a) Audit Committee

The Board shall establish an Audit Committee to enhance its oversight capability over the Corporation's financial reporting, internal control system, internal and external audit processes, and compliance with applicable laws and regulations.

The Committee shall be composed of at least three (3) appropriately qualified non-executive directors, the majority of whom should be Independent Directors. The Chairman shall be an Independent Director and should not be the Chairman of the Board or of any other Committee. The members of the Committee shall have relevant background, knowledge, skills, or experience in the areas of accounting, auditing and finance.

(b) Related Party Transactions Committee

The Board shall establish a Related Party Transactions Committee, which will be tasked with reviewing all material RPTs of the Corporation. The Committee shall be composed of at least three (3) non-executive directors, two (2) of whom should be Independent Directors. The Chairman shall be an Independent Director.

(c) Corporate Governance Committee

The Board shall establish a Corporate Governance Committee that will be tasked to assist the Board in the performance of its corporate governance responsibilities. The Committee shall have at least three (3) Independent Directors as members. The Chairman of the Committee shall be an Independent Director.

(d) Board Risk Oversight Committee

The Board of Directors shall establish a separate Board Risk Oversight Committee that will be responsible for the oversight of the Corporation's enterprise risk management system to ensure its functionality and effectiveness.

The Committee shall be composed of at least three (3) members, the majority of whom shall be Independent Directors. The Chairman shall be an Independent Director and should not be the Chairman of the Board or of any other Committee. At least one member of the Committee must have relevant thorough knowledge and experience on risk and risk management.

¹³ Section 2.2.2, Manual.

2.6 Oversight Functions of the Board

(a) Internal Control System²¹

The Board shall have the following oversight responsibilities for ensuring the presence of appropriate, adequate, strong and effective internal control mechanisms:

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2.2.1.3.1, Manual.

- (i) Establish organizational and operational controls commensurate with, among others, the nature and complexity of the business of the Corporation and its culture, volume, size and complexity of transactions; degree of risks involved, degree of centralization and delegation of authority; extent and effectiveness of information technology; and extent of regulatory compliance;
- (ii) Ensure that an independent audit mechanism is in place to monitor the adequacy and effectiveness of the Corporation's governance, operations and information systems, including the reliability and integrity of financial and operational information, the effectiveness and efficiency of operations, the safeguarding of assets, and compliance with laws, rules, regulations and contracts;
- (iii) Select and appoint a Chief Executive Officer who possesses the ability, integrity and expertise essential for the position, and define, with the assistance of the Corporate Governance Committee, the duties and responsibilities of the Chief Executive Officer who is ultimately responsible for the Corporation's organizational and operational controls;
- (iv) Evaluate proposed senior management appointments;
- (v) Select and appoint qualified and competent management officers;
- (vi) Review the Corporation's human resources policies, conflict of interest situations, compensation program for employees, and management succession plan;
- (vii) Establish a mechanism for monitoring and managing potential conflicts of interest of management, Board members, and shareholders;
- (viii) Approve the Internal Audit Group Charter;
- (ix) Establish an effective performance management framework that will ensure that management, including the Chief Executive Officer, and personnel's performance is at par with the standards set by the Board and Senior Management;

- (x) Assess the performance of management led by the Chief Executive Officer, and control functions led by their respective heads (Chief Finance Officer, Compliance Officer, Internal Audit Group Head);
- (xi) Approve the Board Charter, which shall be publicly available and posted on the Corporation's website.

(b) Enterprise Risk Management¹⁴

The Board shall oversee that a sound enterprise risk management ("ERM") framework is in place to effectively identify, monitor, assess and manage key business risks, which will guide the Board in identifying units/business lines and enterprise-level risk exposures, as well as the effectiveness of risk management strategies.

2.7 Chairman of the Board, President/Chief Executive Officer, and Lead Independent Director²³

(a) The Chairman of the Board

- (i) The Board should be headed by a competent and qualified Chairman.
- (ii) The Chairman shall preside over all meetings of the stockholders and of the Board of Directors.²⁴
- (iii) In addition to his duties as Chairman under the By-laws of the Corporation, the Chairman of the Board has the following responsibilities and functions:²⁵
 - (1) Ensure that the meetings of the Board are held in accordance with an approved annual schedule and the By-laws of the Corporation or as the Chairman of the Board may deem necessary;
 - (2) Supervise the preparation of the agenda of the meeting in coordination with the Corporate Secretary, taking into consideration the suggestions of the President, management and the directors, and make certain that the meeting agenda focuses on strategic matters, including the overall risk appetite of the Corporation, considering the developments in the business and regulatory environments, key governance concerns, and contentious issues that will significantly affect operations;
 - (3) Guarantee that the Board receives accurate, timely, relevant, insightful, concise and clear information to enable it to make sound decisions;
 - (4) Facilitate discussions on key issues by fostering an environment conducive for constructive debate and leveraging on the skills and expertise of individual directors;

¹⁴ Section 2.2.1.3.2, Manual.
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- (5) Ensure that the Board sufficiently challenges and inquires on reports submitted and representations made by management;
- (6) Assure the availability of proper orientation for first-time directors and continuing training opportunities for all directors;
- (7) Make sure that performance of the Board is evaluated at least once a year and discussed and followed up on;
- (8) Assist in ensuring compliance with corporate governance guidelines;

²³ Section 2.2.3,
Manual.

²⁴ Article IV, Section
4, By-laws.

²⁵ 2.2.3.1, Manual.

(9) Maintain quality and timely lines of communication and flow of information between the Board and management in coordination with the Corporate Secretary and the President; and

(10) Perform such other responsibilities as the Board of Directors may, from time to time, assign to him.

(b) The President/Chief Executive Officer

- (i) The President is the Chief Executive Officer of the Corporation.
- (ii) The President and Chief Executive Officer is responsible for the general supervision, administration and management of the business of the Corporation. He shall likewise have the power and duty to establish general administrative and operating policies, and initiate and develop programs for management training and development, as well as executive compensation plans.
- (iii) In addition, the President and Chief Executive Officer has the following responsibilities and functions, among others: ²⁶
 - (1) Determine the Corporation's strategic direction and formulate and implement its strategic plan on the direction of the business;
 - (2) Communicate and implement the Corporation's vision, mission, values and overall strategy and promote any organization or stakeholder change in relation to the same;
 - (3) Oversee the operations and business affairs of the Corporation and manage human and financial resources, as well as property of the Corporation, in accordance with the strategic plan;
 - (4) Have a good working knowledge of the Corporation's industry and market and keep up-to-date with its core business purpose;
 - (5) Direct, evaluate and guide the work of the key officers of the Corporation;
 - (6) Manage the Corporation's resources prudently and ensure a proper balance of the same;

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- (7) Provide the Board of Directors with timely information and interface between the Board and the employees;
- (8) Build the corporate culture and motivate the employees of the Corporation;

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2.2.3.2, Manual.

- (9) Serve as the link between internal operations and external stakeholders; and
- (10) Perform such other duties as are incident to his office or are entrusted to him by the Board of Directors.

(c) Checks and Balances

The proper checks and balances are laid down to ensure that the Board of Directors obtains the benefit of independent views and perspectives of the Chairman and the President and Chief Executive Officer.

(d) Lead Independent Director

- (i) To ensure that the Independent Directors shall be free to express and advocate independent views and perspectives, and that abuse of power and authority and potential conflict of interest are avoided, the Board of Directors shall additionally designate a Lead Independent Director from the Independent Directors, which Lead Independent Director shall have sufficient authority to lead the Board in cases where Management has clear conflicts of interest.²⁷
- (ii) The Lead Independent Director shall have, among others, the following functions:²⁸
 - (1) Serve as an intermediary between the Chairman of the Board and the other directors when necessary;
 - (2) Convene and chair meetings of the non-executive directors;
 - (3) Contribute to the performance evaluation of the Chairman of the Board, as required; and
 - (4) Perform such other responsibilities as the Board of Directors may assign to him.

3. MEMBERSHIP AND QUALIFICATIONS

3.1 Composition

Compliance with the principles of good corporate governance shall start with the Board of Directors. The Corporation shall be headed by a competent, working Board to foster the long-term success of the Corporation, and to sustain its competitiveness and profitability in a manner consistent with its corporate objectives and the long-term best interests of its shareholders and other stakeholders.

Under the Manual²⁷, the members of the Board of Directors shall not be less than five (5) but not more than fifteen (15), and shall be elected in accordance with the Corporation's By-laws, the

²⁷ Section 2.2.3, Manual.

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2.2.3.3, Manual.

²⁹

2.2.1, Manual.

Manual and applicable laws. The Board shall be composed of directors with a collective working knowledge, experience or expertise that is relevant to the industry or sector to which the Corporation belongs. The Board shall always ensure that it has an appropriate mix of competence and expertise and that its members remain qualified for their positions individually and collectively, to enable it to fulfill its roles and responsibilities and respond to the needs of the organization based on the evolving business environment and strategic direction.

The membership of the Board of Directors shall be composed of a combination of executive and non-executive directors (which shall include Independent Directors, as defined in Section 3.3 (a) below). The non-executive directors, who shall comprise a majority of the Board, shall possess the necessary qualifications to effectively participate and help secure objective, independent judgment on corporate affairs and to substantiate proper checks and balances.

Article Sixth of the Articles of Incorporation of the Corporation, as amended to date (the "Articles"), provides that the number of directors of the Corporation shall be fifteen (15). From this number, the Corporation shall have at least three (3) Independent Directors or such number of Independent Directors that constitutes at least one-third of the members of the Board, whichever is higher.³⁰

3.2 Qualifications and Disqualifications

The members of the Board of Directors should be diverse as to gender, age, ethnicity, culture, skills, competencies and knowledge to ensure that optimal decision-making is achieved.³¹

All the directors must possess the qualifications and none of the disqualifications prescribed by law, rules or regulations, and the By-laws.

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(a) Qualifications

In addition to the qualifications for membership in the Board provided for in the RCC, the Securities Regulation Code (“SRC”) and other relevant laws, the members of the Board of Directors shall have the following qualifications³²:

- (i) He shall hold at least one (1) share of voting stock of the Corporation;
- (ii) He shall be at least a college graduate or have sufficient experience in managing the business to substitute for such formal education;
- (iii) He shall be at least twenty one (21) years old;
- (iv) He shall have been proven to possess integrity and probity; and
- (v) He shall be assiduous.

³⁰ Section 2.2.1.6.1, Manual.

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2.2.1.5, Manual.

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2.2.1.5.1, Manual.

(b) Disqualifications

(i) Conflict of Interest

Under the By-laws³³, no person shall qualify or be eligible for nomination or election to the Board of Directors if he is engaged in any business which competes with or is antagonistic to that of the Corporation. Without limiting the generality of the foregoing, a person shall be deemed to be so engaged:

- (1) If he is an officer, manager or controlling person of, or the owner (either of record or beneficially) of ten percent (10%) or more of any outstanding class of shares of, any corporation (other than one in which the Corporation owns at least thirty percent (30%) of the capital stock) engaged in a business which the Board, by at least three-fourths vote, determines to be competitive or antagonistic to that of the Corporation; or,
- (2) If he is an officer, manager or controlling person of, or the owner (either of record or beneficially) of ten percent (10%) or more of any outstanding class of shares of, any other corporation or entity engaged in any line of business of the Corporation, when in the judgment of the Board, by at least three-fourths vote, the laws against combinations in restraint of trade shall be violated by such person's membership in the Board of Directors; or,
- (3) If the Board, in the exercise of its judgment in good faith, determine by at least three-fourths vote that he is the nominee of any person set forth in (1) or (2).

In determining whether or not a person is a controlling person, beneficial owner, or the nominee of another, the Board may take into account such factors as business and family relationship.

(ii) Permanent Disqualifications

Any of the following shall be a ground for permanent disqualification of a director of the Corporation³⁴:

- (1) Any person convicted by final judgment or order by a competent judicial or administrative body of any crime that (a) involves the purchase or sale of securities, as defined in the SRC; (b) arises out of the person's conduct as an underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; or (c) arises out of his fiduciary relationship with a bank, quasi-bank, trust company, investment house or as an affiliated person of any of them;
- (2) Any person who, by reason of misconduct, after hearing, is permanently enjoined by a final judgment or order of the Securities and Exchange Commission ("SEC"),

³³ Article II, Section 1, By-laws.

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2.2.1.5.2.1, Manual.

Bangko Sentral ng Pilipinas ("BSP"), or any court or administrative body of competent jurisdiction from: (a) acting as an underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; or (b) acting as director or officer of a bank, quasi-bank, trust company, investment house, or investment company; (c) engaging in or continuing any conduct or practice in any of the capacities mentioned in both (a) and (b) of this paragraph, or willfully violating the laws that govern securities and banking activities;

- (3) Any person who (a) is currently the subject of an order of the SEC, BSP or any court or administrative body denying, revoking or suspending any registration, license or permit issued to him under the RCC, SRC or any other law administered by the SEC or BSP, or under any rule or regulation issued by the SEC or BSP; (b) has otherwise been restrained from engaging in any activity involving securities and banking; or (c) is currently the subject of an effective order of a self-regulatory organization suspending or expelling him from membership, participation or association with a member or participant of the organization;
- (4) Any person convicted by final judgment or order of a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, theft, estafa, counterfeiting, misappropriation, forgery, bribery, false affirmation, perjury or other fraudulent acts or transgressions;
- (5) Any person who has been adjudged by final judgment or order of the SEC, BSP, a competent court or other administrative body to have willfully violated, or willfully aided, abetted, counseled, induced or procured the violation of any provision of the SRC, the RCC, or any other law administered by the SEC or BSP, or any rule, regulation or order of the SEC or BSP;
- (6) Any person found guilty by final judgment or order of a foreign court or equivalent financial regulatory authority of acts, violations or misconduct similar to any of the acts, violations or misconduct listed in the foregoing paragraphs;
- (7) Any person judicially declared to be insolvent; and
- (8) Other grounds as the SEC may provide.

(ii) Temporary Disqualifications

Any of the following shall be a ground for the temporary disqualification of a director³⁵:

- (1) Refusal to fully disclose the extent of his business interest or comply with disclosure requirements as required under the SRC and its Implementing Rules and Regulations. This disqualification shall be in effect as long as his refusal persists;

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2.2.1.5.2.2, Manual.

- (2) Absence in more than fifty percent (50%) of all meetings, both regular and special, of the Board of Directors during his incumbency, or any twelve (12) month period during said incumbency, unless the absence is due to illness, death in the immediate family or serious accident. This disqualification applies for purposes of the succeeding election;
- (3) Dismissal or termination for cause as director of any publicly-listed company, public company, registered issuer of securities and holder of a secondary license from the SEC. This disqualification shall be in effect until he has cleared himself of any involvement in the cause that gave rise to his dismissal or termination;
- (4) If the beneficial equity ownership of an Independent Director in the Corporation or its subsidiaries and affiliates exceeds two percent (2%) of its subscribed capital stock. The disqualification shall be lifted if the limit is later complied with;
- (5) If any of the judgments or orders cited in the grounds for the permanent disqualification of directors has not yet become final;
- (6) If he was (a) convicted by final judgment (i) of an offense punishable by imprisonment for a period exceeding six (6) years, (ii) for violating the RCC, or (iii) for violating the SRC; (b) found administratively liable for any offense involving fraudulent acts; and (c) by a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in (a) and (b) of this paragraph, within five (5) years prior to his election as director;¹⁵
- (7) If he was convicted by final judgment rendered by a court of competent jurisdiction for entering into an abusive material related party transaction. The disqualification shall be for a period of at least one (1) year or more, as may be determined by the SEC;¹⁶ and
- (6) If any person earlier elected as Independent Director of the Corporation becomes an officer, employee or consultant of the Corporation.

A temporarily disqualified director shall, within sixty (60) business days from such disqualification, take the appropriate action to remedy or correct the disqualification. If he fails or refuses to do so for unjustified reasons, the disqualification shall become

¹⁵ Section 26, RCC.

¹⁶ SEC Memorandum Circular No. 10, Series of 2019.

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permanent, except in the case of temporary disqualification where the Independent Director becomes an officer, employee or consultant of the Corporation, in which case such disqualified independent director shall become eligible for election as Independent Director after the lapse of three (3) years from the termination of his officership, employment or consultancy with the Corporation.

3.3 Independent Directors

(a) Definition

An Independent Director is a person who, apart from his fees and shareholdings in the Corporation, has no business or relationship with the Corporation, which could, or could reasonably be perceived to, materially interfere with the exercise of his independent judgment in carrying out his responsibilities as a director.¹⁷

Under the By-laws¹⁸, an Independent Director shall mean a person other than an officer or employee of the Corporation, its parent or subsidiaries, or any other individual having a relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(b) Number of Independent Directors

The Corporation shall have at least three (3) Independent Directors or such number as to constitute at least one-third of the members of the Board, whichever is higher.

(c) Qualifications of an Independent Director

The Board should ensure that its Independent Directors possess all the qualifications and none of the disqualifications of an Independent Director to hold the position at the time of his election and/or re-election as an Independent Director.

Each nominee for Independent Director shall submit a certification to this effect, in such form and substance as may be required by the SEC, before his election.

Independent Directors shall possess a good general understanding of the industry they are in, as well as the qualifications and stature that would enable them to effectively and objectively participate in the deliberations of the Board. Accordingly, in addition to the qualifications as a director, the Corporation shall have an Independent Director who:

- (i) Is not, or has not been a senior officer or employee of the Corporation unless there has been a change in the controlling ownership of the Corporation;
- (ii) Is not, and has not been in the three (3) years immediately preceding the election, (x) a director of the Corporation; (y) a director, officer, employee of the Corporation's subsidiaries, associates, affiliates or related companies; or (z) a director, officer, employee of the Corporation's substantial shareholders and its related companies;
- (iii) Has not been appointed in the Corporation, its subsidiaries, associates, affiliates or related companies as Chairman "Emeritus," "Ex-Officio" director or officer or member of any advisory board, or otherwise appointed in a capacity to assist the Board in the

¹⁷ Section 2.2.1.6, Manual.

¹⁸ Article II, Section 1-A (a), By-laws.

performance of its duties and responsibilities within three (3) years immediately preceding his election;

- (iv) Is not an owner of more than two percent (2%) of the outstanding shares of the Corporation, its subsidiaries, associates, affiliates or related companies;
- (v) Is not a relative of a director, officer, or substantial shareholder of the Corporation or any of its related companies or of any of its substantial shareholders. For this purpose, relatives include spouse, parent, child, brother, sister and the spouse of such child, brother or sister;
- (vi) Is not acting as a nominee or representative of any director of the Corporation or any of its related companies;
- (vii) Is not a securities broker-dealer of listed companies and registered issuers of securities. A "securities broker-dealer" refers to any person holding any office of trust and responsibility in a broker-dealer firm, which includes, among others, a director, officer, principal stockholder, nominee of the firm to any stock exchange, an associated person or salesman, and an authorized clerk of the broker or dealer;
- (viii) Is not retained, either in his personal capacity or through a firm, as a professional adviser, auditor, consultant, agent or counsel of the Corporation, any of its related companies or substantial shareholder, or is otherwise independent of management and free from any business or other relationship within the three (3) years immediately preceding the date of his election;
- (ix) Does not engage or has not engaged, whether by himself or with other persons or through a firm of which he is a partner, director or substantial shareholder, in any transaction with the Corporation or any of its related companies or substantial shareholders, other than such transactions that are conducted at arm's length and could not materially interfere with or influence the exercise of his independent judgment;
- (x) Is not affiliated with any non-profit organization that receives significant funding from the Corporation or any of its related companies or substantial shareholders; and
- (xi) Is not employed as an executive officer of another company where any of the Corporation's executives serve as directors.

Related companies, as used herein refer to (1) the Corporation's holding or parent company; (2) its subsidiaries; and (3) subsidiaries of its holding or parent company.

(d) Term of Independent Directors

The Independent Directors can serve for a maximum cumulative term of nine (9) years. Upon reaching this limit, an Independent Director will be perpetually barred from reelection as such

in the Corporation, but may continue to qualify for nomination and election as a non-independent director. In the instance that the Corporation needs to retain an Independent Director who has served for nine (9) years, the Board shall provide meritorious justifications and seek shareholders' approval during the annual stockholders' meeting.

3.4 Nominations for the Election of Directors

Each stockholder has the right to nominate any director who possesses all of the qualifications and none of the disqualifications set forth in the RCC.¹⁹ In this regard, all nominations for the election of directors by the stockholders shall be submitted in writing to the Board of Directors through the Corporate Secretary on or before the last day of January of every year or at such earlier or later date that the Board of Directors may fix.²⁰

The list of names of the nominees to the Board of Directors shall be filed and submitted to the Corporate Governance Committee through the office of the Corporate Secretary at least 60 days prior to the date set for the annual stockholders' meeting wherein they will be elected. The Corporate Governance Committee shall shortlist the nominees to those qualified and aligned with the strategic direction of the Corporation.²¹

3.5 Election of Directors

The Board of Directors shall be elected from among the holders of stocks in the Corporation, subject to their possession of all of the qualifications and none of the disqualifications set out in the Bylaws, Manual, and relevant laws, rules and regulations.

The following provisions shall govern the election of directors:²²

- (a) At all elections of directors, there must be present, either in person or through a representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock. The stockholders may also vote through remote communication or *in absentia*. A stockholder who participates through remote communication or *in absentia* shall be deemed present for purposes of quorum.
- (b) The election must be by ballot if requested by any voting stockholder. Stockholders entitled to vote shall have the right to vote the number of shares of stock standing in their own names in the stock books of the Corporation at the record date determined in accordance with the By-laws.

¹⁹ Section 23, RCC.

²⁰ Article II, Section 1, By-laws.

²¹ Section 2.2.1.7.1, Manual.

²² Section 23, RCC.

- (c) Said stockholders may (i) vote such number of shares for as many persons as there are directors to be elected; (ii) cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal; or (iii) distribute them on the same principle among as many candidates as he may see fit; provided, that the total number of votes cast by him shall not exceed the number of shares owned by the stockholders as shown in the books of the Corporation multiplied by the whole number of directors to be elected; provided, however, that no delinquent stock shall be voted.
- (d) Candidates receiving the highest number of votes shall be declared elected. If no election is held, or the owners of majority of the outstanding capital stock or majority of the members entitled to vote are not present in person, by proxy, or through remote communication or not voting *in absentia* at the meeting, such meeting may be adjourned.
- (e) The non-holding of elections and the reasons therefor shall be reported to the SEC within thirty (30) days from the date of the scheduled election. The report shall specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date. If no new date has been designated, or the rescheduled election is likewise not held, the SEC may, upon the application of a shareholder, and after verification of the unjustified nonholding of the election, summarily order that an election be held.²³

3.6 Term of Office

The Board of Directors shall be elected during each annual meeting of stockholders and shall hold office for a term of one (1) year and until the election and qualification of their successors.²⁴

3.7 Resignation

A director may, at any time, submit his written resignation, which shall state the effective date when he will no longer be considered a director of the Corporation, or if no such date is specified, such resignation shall be considered as effective immediately upon receipt by the Board, through the Corporate Secretary, of the written resignation.

3.8 Removal

A director may be removed as follows:

- (a) In case at any time the stock certificate book or the stock register shows that a director has ceased to be a stockholder on record, his seat as a member of the Board of Directors shall ipso facto become vacant.²⁵
- (b) Any director of the Corporation may be removed from office by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock; provided, that

²³ Section 25, RCC.

²⁴ Article II, Section 1, By-laws.

²⁵ Article II, Section 2, By-laws.

such removal shall take place either at a regular meeting of the Corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders of the Corporation of the intention to propose such removal at the meeting. A special meeting of the stockholders for the purpose of removing any director must be called by the Corporate Secretary on order of the President, or upon the written demand of the stockholders representing or holding at least a majority of the outstanding capital stock. Should the Corporate Secretary, despite demand, fail or refuse to call the special meeting or to give notice thereof, the call for the meeting may be addressed directly to the stockholders by any stockholder of the Corporation signing the demand. Notice of the time and place of such meeting, as well as of the intention to propose such removal, must be given by publication or by written notice as prescribed herein. Removal may be with or without cause; provided, that removal without cause may not be used to deprive minority shareholders of the right of representation to which they may be entitled under Section 23 of the RCC.²⁶

- (c) The SEC shall, *motu proprio* or upon verified complaint, and after due notice and hearing, order the removal of a director elected despite the disqualification, or whose disqualification arose or is discovered subsequent to an election. The removal of a disqualified director shall be without prejudice to other sanctions that the SEC may impose on the Board of Directors who, with knowledge of the disqualification, failed to remove such director.²⁷

3.9 Vacancies

Any vacancy in the Board of Directors caused by death, resignation, inability or disqualification to act, or otherwise, shall be filled (a) by the unanimous vote of the remaining members of the Board, if constituting a quorum, or (b) by the stockholders at a regular or at any special meeting of stockholders called for the purpose, by the election of a qualified person screened by the Corporate Governance Committee. A director so elected to fill a vacancy shall hold office for the remainder of the term of which such vacancy applies, or until his successor shall have been elected and qualified.⁴⁹

When the vacancy is due to term expiration, the election shall be held no later than the day of such expiration at a meeting called for that purpose. When the vacancy arises as a result of removal by the stockholders, the election may be held on the same day of the meeting authorizing the removal and this fact must be so stated in the agenda and notice of said meeting. In all other cases, the election must be held no later than forty-five (45) days from the time the vacancy arose. A director elected to fill a vacancy shall be referred to as a replacement director and shall serve only for the unexpired term of his predecessor in office.

However, when the vacancy prevents the remaining directors from constituting a quorum and emergency action is required to prevent grave, substantial and irreparable loss or damage to the Corporation, the vacancy may be temporarily filled from among the officers of the Corporation by unanimous vote of the remaining directors. The action by the designated director shall be limited to the

²⁶ Section 27, RCC.

²⁷ *Ibid.* ⁴⁹ Article II, Section 2, By-laws; Section 2.2.1.7.6, Manual; Section 28, RCC.

emergency action necessary, and the term shall cease within a reasonable time from the termination of the emergency or upon election of the replacement director, whichever comes earlier. The Corporation must notify the SEC within three (3) days from the creation of the emergency Board of Directors, stating therein the reason for its creation.

Any directorship to be filled by reason of an increase in the number of directors shall be filled only by an election at a regular or at a special meeting of stockholders duly called for the purpose, or in the same meeting authorizing the increase of directors or trustees if so stated in the notice of the meeting.²⁸

3.10 Compensation of Directors

The members of the Board of Directors of the Corporation shall each be entitled to a director's fee in the amount to be fixed by the stockholders at a regular or special meeting duly called for the purpose.²⁹ In the absence of such fee, the Corporation provides each director with a reasonable *per diem* for each Board and Board Committee meeting attended by such director.

In no case shall the total annual compensation of directors exceed ten percent (10%) of the net income before income tax of the Corporation during the preceding year. Directors shall not participate in the determination of their own *per diems* or compensation. The Corporation shall submit to the shareholders and the SEC an annual report of the total compensation of each of their directors.³⁰

4. DUTIES AND RESPONSIBILITIES OF DIRECTORS

4.1 General Duties and Responsibilities

A director shall have the following duties and responsibilities, as set out in the Manual³¹:

- (a) To conduct fair business transactions with the Corporation and to ensure that personal interest does not conflict with the interests of the Corporation. A director with a material interest in any transaction affecting the Corporation should abstain from taking part in the deliberations for the same;
- (b) To devote time and attention necessary to properly and effectively discharge his duties and responsibilities, including sufficient time to be familiar with the Corporation's business;
- (c) To act judiciously;
- (d) To exercise objective and independent judgment on all corporate affairs;
- (e) To have a working knowledge of the statutory and regulatory requirements affecting the Corporation, including the contents of its Articles of Incorporation and By-laws, the rules and

²⁸ Section 28, RCC.

²⁹ Article II, Section 5, By-laws.

³⁰ Section 29, RCC.

³¹ Section 2.2.1.4, Manual.

- regulations of the SEC, and where applicable, the requirements of other regulatory agencies, and keep abreast of industry developments and business trends;
- (f) To observe confidentiality of all non-public information which he may acquire or learn by reason of his position as a director;
 - (g) To ensure the continuing soundness, effectiveness and adequacy of the Corporation's control environment; and
 - (h) To attend a seminar or program on corporate governance at least once a year, which shall be conducted by a training provider duly accredited by the SEC.

4.2 Attendance and Participation in Meetings

A director shall have the following duties and responsibilities regarding meetings, as set out in the Manual³²:

- (a) The directors should attend and actively participate in all meetings of the Board, Committees, and shareholders in person or through teleconferencing or videoconferencing conducted in accordance with the rules and regulations of the SEC, except when justifiable causes, such as illness, death in the immediate family and serious accidents, prevent them from doing so. In Board and Committee meetings, the director should review meeting materials and if called for, ask the necessary questions or seek clarifications and explanations.
- (b) Independent Directors should always attend Board meetings. Absence of Independent Directors in Board meetings shall not affect the quorum requirement, unless otherwise provided in the By-laws of the Corporation and applicable laws, rules and regulations. However, the Board may, to promote transparency, require the presence of at least one (1) Independent Director in all its meetings.
- (c) The non-executive directors shall have separate periodic meetings with the external auditor and heads of the internal audit, compliance and risk functions, without any executive directors present to ensure that proper checks and balances are in place within the Corporation. The meetings should be chaired by the Lead Independent Director.

4.3 Policy on Multiple Board Seats³³

A director should exercise due discretion in accepting and holding directorships other than in the Corporation, provided that, in holding such other directorships, such director should ensure that his capacity to diligently and efficiently perform his duties and responsibilities as a director of the Corporation is not compromised.

³² Section 2.2.1.8, Manual.

³³ Section 2.2.1.10, Manual.

The non-executive directors of the Board should concurrently serve as directors to a maximum of five (5) publicly listed companies to ensure that they have sufficient time to fully prepare for meetings, challenge management's proposals and views, and oversee the long-term strategy of the Corporation.

A director should notify the Board where he is an incumbent director before accepting a directorship in another company.

4.4 Reports by Directors, Officers and Principal Stockholders under SRC Rule 23

Every person who is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of any security of the Corporation, or who is a director or an officer of the Corporation, should:

(a) Within ten (10) calendar days after the effective date of the registration statement for that security, or within ten (10) calendar days after he becomes such beneficial owner, director or officer, subsequent to the effective date of the registration statement, whichever is earlier, file a statement with the SEC, and with the Philippine Stock Exchange ("PSE") on Form 23-A (Initial Statement of Beneficial Ownership of Securities) indicating the amount of securities of such issuer of which he is the beneficial owner;

(b) Within ten (10) calendar days after the close of each calendar month thereafter, if there has been any change in such ownership during the month, file a statement with the Commission and with the PSE on Form 23-B (Statement of Changes in Beneficial Ownership of Securities) indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during that calendar month;

(c) Notify the SEC if his direct or indirect beneficial ownership of securities falls below ten percent (10%), or if he ceases to be an officer or director of the Corporation. After filing such notification, he shall no longer be required to file Form 23-B. However, a newly appointed officer, who has no beneficial ownership over the shares of the Corporation, shall notify the SEC of such fact within ten (10) calendar days from such appointment.

(d) If the security is listed on the PSE, the report shall be filed with the PSE in accordance with the rules of the PSE, but not more than five (5) calendar days after such person became beneficial owner. The filing with the PSE may be deemed as filing with the SEC pursuant to a Memorandum of Agreement between the PSE and the SEC; Provided that, the Memorandum of Agreement shall provide for the ability of the SEC to download and upload the same information made available to the PSE.

In determining whether a person is the beneficial owner, directly or indirectly, of more than ten percent (10%) of any class of any registered security, such class shall be deemed to consist of the amount of such class which has been issued.

For the purpose of determining the percentage of ownership of voting trust certificates or certificates of deposit for securities, the class of voting trust certificate or certificates of deposit shall consist of the entire amount of issuable voting trust certificates or certificates of deposit.

A person filing a statement pursuant to SRC Rule 23 otherwise than as the direct beneficial

owner of any security shall specify the nature of his beneficial ownership in such security.

SRC Forms 23-A and 23-B provide that:

- (1) A person is directly or indirectly the beneficial owner of any equity security with respect to which he has shares:
 - (A) Voting power which includes the power to vote, or to direct the voting of, such security; and/or
 - (B) Investment power which includes the power to dispose of, or to direct the disposition of, such security.
- (2) A person will be deemed to have an indirect beneficial interest in any equity security which is:
 - (A) held by members of a person's immediate family sharing the same household;
 - (B) held by a partnership in which such person is a general partner;
 - (C) held by a corporation of which such person is a controlling shareholder; or
 - (D) subject to any contract, arrangement or understanding which gives such person voting power or investment power with respect to such security.

4.5 Dealings of Directors with the Corporation

A contract of the corporation with one or more of its directors, officers or their spouses and relatives within the fourth civil degree of consanguinity or affinity is voidable, at the option of the Corporation, unless all the following conditions are present:

- (a) The presence of such director in the Board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;
- (b) The vote of such director was not necessary for the approval of the contract;
- (c) The contract is fair and reasonable under the circumstances;
- (d) Material contracts are approved by at least two-thirds (2/3) of the entire membership of the Board, with at least a majority of the Independent Directors voting to approve the material contract; and
- (e) In case of an officer, the contract has been previously authorized by the Board.

Where any of the first three conditions set forth above is absent, in the case of a contract with a director, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock in a meeting called for the purpose; Provided, that full disclosure of the adverse interest of the directors involved is made at such meeting and the contract is fair and reasonable under the circumstances.³⁴

4.6 Contracts between Corporations with Interlocking Directors

Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone; provided, that if the interest of the interlocking director in one corporation is substantial and his interest in the other corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section insofar as the latter corporation or corporations are concerned. Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.³⁵

4.6 Disloyalty of a Director

Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the Corporation, thereby obtaining profits to the prejudice of the Corporation, he must account for and refund to the latter all such profits, unless the act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.³⁶

4.7 Liabilities of Directors

A director shall be liable for any act and/or omission in violation of laws, rules and regulations, which include, among others, the following:

- (a) Directors who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the Corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors shall be liable jointly and severally for all damages resulting therefrom suffered by the Corporation, its stockholders and other persons.³⁷
- (b) When a director or officer attempts to acquire or acquires any interest adverse to the Corporation in respect of any matter which has been reposed in him in confidence, and upon which, equity imposes a disability upon him to deal in his own behalf, he shall be liable as a

³⁴ Section 31, RCC.

³⁵ Section 32, RCC.

³⁶ Section 33, RCC.

³⁷ Section 30, RCC.

trustee for the Corporation and must account for the profits which otherwise would have accrued to the Corporation.³⁸

- (c) In relation to Section 10.1 (k) of the SRC, the Corporation and its directors and officers shall be held liable (in proper cases) in the event Sections 8 and 12 of the SRC are violated as when (i) the number of persons holding the exempt security under Section 10.1(k) exceeds nineteen (19) within a twelve (12) month period or (ii) the sale, offer for sale, or distribution of a security, which is not exempt or which does not fall under an exempt transaction, is actively solicited from or marketed to nonqualified buyers in the Philippines by any entity, including its agents, representatives, employees or any person acting on its behalf.⁶¹
- (d) Any disclosure signed and filed with the SEC and the PSE, or released to the news media by any director, executive officer or a principal (as defined under Section 23 of the SRC) of the Corporation shall be considered as part of a current report on Form 17-C and deemed as an official filing of the Corporation if it does not deny the subject information within two (2) days from the filing or release of the disclosure. Any misleading statement, misrepresentation or omission of a material fact therein shall be considered the joint responsibility of the Corporation and the reporting director, officer or principal.³⁹
- (e) No director, officer or principal stockholder of the Corporation shall make a short sale in securities of the Corporation in which he is a director, officer or principal stockholder.⁴⁰

The term "short sale" shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of the seller with the commitment of the seller or securities borrower to return or deliver said securities or their equivalent to the lender on a determined or determinable future date. A person shall be deemed to own a security if: (i) he or his agent has title to it; (ii) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it and has not yet received it; (iii) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; (iv) he has an option to purchase or acquire it and has exercised such option; or (v) he has rights or warrants to subscribe to it and has exercised such rights or warrants provided, however, that a person shall be deemed to own securities only to the extent he has a net long position in such securities.⁴¹

- (f) A director is considered an "insider" under Section 3.8 of the SRC, and as such, shall be liable for insider trading in case of any violation of the provisions of Section 27 of the SRC, SRC Rule 27 and other related rules and regulations.
- (g) It shall be unlawful for any director or officer of, or any owner of any securities issued by, the Corporation required to file any document, report or other information under the SRC or any

³⁸ Ibid. ⁶¹ SRC Rule 10.1.2.1.

³⁹ SRC Rule 17.1.1.2.

⁴⁰ SRC Rule 24.2-2.8.

⁴¹ SRC Rule 24.2-2.1.

rule or regulation of the SEC, without just cause, to hinder, delay or obstruct the making or filing of any such document, report, or information.⁴²

- (h) The Corporation and every person who signed the registration statement, and every director who was a director in the Corporation at the time of filing of the registration statement or any part, supplement or amendment thereof, among other persons set out in SRC Rule 56, shall be liable for untrue statement of a material fact in such registration statement or omits to state a material fact or necessary to make such statements not misleading therein.⁴³

5. STRUCTURE AND OPERATIONS

5.1 Meetings

The regular annual meeting of the Board of Directors for the election of officers, and for the transaction of such other business as shall properly come before it shall be held without notice immediately after the adjournment of the annual stockholders' meeting.⁴⁴ The Board shall further hold regular meetings quarterly. Special meetings of the Board of Directors may be held at the call of the President or upon the written request of any three (3) directors.⁴⁵ Either regular or special meetings of the Board may be held at any time and at any place in the Philippines without need of notice, by the unanimous consent of all directors or with the presence and participation of all directors.⁴⁶

5.2 Notice

Notices of the regular or special meetings of the Board of Directors, specifying the date, time and place of the meeting, shall be communicated by the Secretary to each director personally or sent by mail or telegraph at least three (3) days prior to the date of the meeting, subject to the right of any such director to waive notice to him.⁴⁷

5.3 Quorum and Voting

- (a) No meeting of the Board may proceed to transact any business unless a quorum is present at the start of and throughout the meeting. At least two-thirds (2/3) of the number of directors as fixed in the Articles of Incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors present at a meeting at which there is a quorum shall be valid as a corporate act, except as may have been provided in the By-laws or in contracts binding on the Corporation, and except for the election of officers which shall require the vote of a majority of all the members of the Board. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time until a quorum is had.⁴⁸

⁴² SRC Rule 51.3.

⁴³ SRC Rule 56.

⁴⁴ Article III, Section 1, By-laws.

⁴⁵ Article III, Section 3, By-laws.

⁴⁶ Article III, Section 5, By-laws.

⁴⁷ Article III, Sections 2 and 3, By-laws.

⁴⁸ Article III, Section 4, By-laws.

- (b) Notwithstanding the foregoing, the RCC provides that the following matters require a greater number of votes from the directors, together with the requisite vote of the stockholders of the Corporation:
- (i) Amendment of Articles of Incorporation — by a majority vote of the Board and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock⁴⁹;
 - (ii) Filling of vacancies in the office of director other than by removal by the stockholders or by expiration of term — by a vote of at least a majority of the remaining directors, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose⁵⁰;
 - (iii) Dealings of directors with the Corporation — material contracts should be approved by at least two-thirds (2/3) of the entire membership of the Board, with at least a majority of the Independent Directors voting to approve the material contract⁵¹;
 - (iv) Extension or shortening of corporate term — by a majority vote of the Board and ratified at a meeting by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock⁵²;
 - (v) Increase or decrease of capital stock — by a majority vote of the Board and by two-thirds (2/3) of the outstanding capital stock at a stockholders' meeting duly called for the purpose⁵³;
 - (vi) Incur, create or increase bonded indebtedness — by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock⁵⁴;
 - (vii) Sale or other disposition of all or substantially all assets — by a majority vote of its Board, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, in a stockholders' meeting duly called for the purpose⁵⁵;
 - (viii) Investment of corporate funds in another corporation or business or for any purpose other than its primary purpose — by a majority of the Board and ratified by the

⁴⁹ Section 15, RCC.

⁵⁰ Section 28, RCC.

⁵¹ Section 31, RCC.

⁵² Section 36, RCC.

⁵³ Section 37, RCC.

⁵⁴ Section 38, RCC.

⁵⁵ Section 39, RCC.

stockholders representing at least two-thirds (2/3) of the outstanding capital stock, at a stockholders' meeting duly called for the purpose⁵⁶;

- (ix) Declaration of stock dividends — by a majority of the Board with the approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose⁵⁷;
- (x) Entering into a management contract — by a majority of the Board and by stockholders owning at least the majority of the outstanding capital stock, of both the managing and the managed corporation, at a meeting duly called for the purpose; Provided, that (1) where a stockholder or stockholders representing the same interest of both the managing and the managed corporations own or control more than onethird (1/3) of the total outstanding capital stock entitled to vote of the managing corporation; or (2) where a majority of the members of the board of directors of the managing corporation also constitute a majority of the members of the board of directors of the managed corporation, then the management contract must be approved by the stockholders of the managed corporation owning at least two-thirds (2/3) of the total outstanding capital stock entitled to vote⁵⁸;
- (xi) Amendments to By-laws; Adoption of new By-laws — by a majority vote of the Board and the owners of at least a majority of the outstanding capital stock, at a regular or special meeting duly called for the purpose. The owners of two-thirds (2/3) of the outstanding capital stock may delegate to the Board the power to amend or repeal the By-laws or adopt new By-laws; Provided, that any power delegated to the Board to amend or repeal the By-laws or adopt new By-laws shall be considered as revoked whenever stockholders owning or representing a majority of the outstanding capital stock shall so vote at a regular or special meeting⁵⁹;
- (xii) Approval of the plan of merger or consolidation — by majority vote of each of the Board of Directors of the constituent corporations of the plan of merger or consolidation and the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporation⁶⁰;
- (xiii) Amendment to the plan of merger or consolidation — by majority vote of the respective Boards of Directors of all the constituent corporations and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each of the constituent corporations⁶¹;
- (xiv) Voluntary dissolution where no creditors are affected — by majority vote of the Board and by a resolution adopted by the affirmative vote of the stockholders owning at least

⁵⁶ Section 41, RCC.

⁵⁷ Section 42, RCC.

⁵⁸ Section 43, RCC.

⁵⁹ Section 47, RCC.

⁶⁰ Section 76, RCC.

⁶¹ *Ibid.* ⁸⁵ Section 134, RCC.

majority of the outstanding capital stock at a meeting to be held upon the call of the directors⁸⁵; and

- (xv) Voluntary dissolution where creditors are affected — a verified petition for dissolution shall be signed by a majority of the Board, verified by the President or Secretary or one of its directors, and by the affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a meeting of its stockholders called for that purpose.⁶²

5.4 Conduct of Meetings

The Chairman of the Board, or in his absence, the President and Chief Executive Officer, should preside at all meetings of the Board of Directors.⁶³ If none of the foregoing is in office and present and acting, by any other director chosen by the Board. The Corporate Secretary, shall act as secretary of every meeting, if not present, the Assistant Corporate Secretary shall act as secretary of the meeting. In the absence of both, the Chairman of the meeting shall appoint a secretary of the meeting. The Secretary shall keep a record of the proceedings of the Board of Directors.⁶⁴

5.5 Attendance at Meetings by Teleconference, Videoconference or Similar Modes

Directors who cannot physically attend or vote at Board meetings can participate and vote through remote communication such as videoconferencing, teleconferencing, or other alternative modes of communication that allow them reasonable opportunities to participate. Directors cannot attend or vote by proxy at Board meetings.⁸⁹

5.6 Record of Meetings

Full minutes of the proceedings of, and resolutions made during, Board meetings, shall be kept by the Corporate Secretary. Notices, minutes, agenda and materials presented during the Board meetings will be made available to any member of the Board upon request to the Corporate Secretary.

5.7 Other Attendees

As necessary, the Board may invite members of management and the organizational staff to attend the Board meetings to provide relevant information or data necessary for the matters for discussion during the Board meetings. At the discretion of the Board, separate meetings with any member of the Corporation's management may be held, whenever it is deemed appropriate by the Board for the exercise of its functions.

5.8 Access to Resources and to Adequate and Timely Information

⁶² Section 135, RCC.

⁶³ Article IV, Section 4, By-laws.

⁶⁴ Ibid. ⁸⁹ Section 52, RCC.

The Board shall have full access to management, personnel and records for the purpose of performance of its duties and responsibilities hereunder.

Management shall provide the Board with complete, adequate and timely information about the matters to be taken up during their meetings. Upon reasonable request, the directors, individually or as a group, may seek external legal counsel or independent professional advice in the discharge of their duties at the expense of the Corporation, which expense must be reasonable. The members of the Board shall be given independent access to management and the Corporate Secretary.⁶⁵

5.9 Authority

The Board shall have the authority to conduct or order the investigation into any matter within its scope of responsibility and all directors, officers and employees of the Corporation are enjoined to cooperate as requested by the Board, without interference or censorship by management.

6. PERFORMANCE EVALUATION

6.1 Periodic Assessment⁶⁶

The Board shall assess its effectiveness periodically, with the end in view of ensuring that its performance accords with best practice. Such assessment must compare its performance with the requirements under the relevant provisions of the By-laws, the Manual and this Board Charter, which shall be the basis of its formulation of objectives and plans to improve its performance, including any recommendations for amendments to this Board Charter for approval by the Board.

The Board shall conduct an annual self-assessment of its performance (or in such shorter intervals as may be set by the Board), including the performance of the Chairman of the Board, the President, individual members of the Board and Board Committees. Every three (3) years, the assessment should be supported by an external facilitator.

The Board shall assess its performance through a self assessment worksheet (the "Assessment") that substantially adopts the pertinent and relevant guidelines of the SEC. The Board's self-assessment system will provide, at the minimum, criteria and process to determine the performance of the Board, the individual directors and the Board Committees, and will be disclosed in the Corporation's website as a mechanism to solicit and receive feedback from the shareholders. Comments from management, employees, shareholders and other stakeholders of the Corporation may provide their feedback on the performance of the Board and for other valid concerns involving the Board through either: (a) written communication addressed to the Chairman at the Corporation's principal address, or (b) written message submitted via the Corporation's website. This feedback mechanism is aimed to facilitate dialogue within the organization about possible ways to improve the Board's performance.

The Compliance Officer shall establish an evaluation system to determine and measure compliance with the Manual and this Board Charter. Any violation thereof shall subject the responsible officer or employee

⁶⁵ Section 2.2.1.9, Manual.

⁶⁶ Section 7, Manual.

to the penalty provided under Section 8 of the Manual. The establishment of such evaluation system, including the features thereof, shall be disclosed in the Corporation's annual report or in such form of report that is applicable to the Corporation. The adoption of such performance evaluation system must be covered by a Board approval.

The results of the Assessment shall be validated by the Compliance Officer and the Corporate Governance Committee.

The entire assessment process shall be documented and shall form part of the records of the Corporation that may be examined by the SEC and the PSE, where appropriate, from time to time.

6.2 Annual Review

This Board Charter shall be reviewed and updated, as may be required and deemed appropriate from time to time. Copies of this Board Charter shall be provided to all members of the Board. It shall likewise be made publicly available to any requesting party upon written request to the Corporate Secretary and shall be posted on the website of the Corporation.

7. TRAINING⁶⁷

7.1 Prior to assuming office, all first-time directors of the Corporation should undergo an orientation program on the Corporation's business and corporate structure, its vision, mission and corporate strategy, Articles of Incorporation and By-laws, Manual, Board Charter and Code of Ethics, to ensure that new members are appropriately apprised of their duties and responsibilities, before beginning their directorships. The orientation program should be able to meet the specific needs of the Corporation and the individual directors and aid any new director in effectively performing his functions.

7.2 Directors and key officers of the Corporation, including the Corporate Secretary and Compliance Officer, should also undergo annual training and continuing education programs to further their knowledge and assist in their development. The program should aim to promote effective Board performance and the continuing qualification of directors in carrying out their duties and responsibilities. The annual continuing training program is intended to ensure that all directors are continuously informed of the developments in the business and regulatory environments, including emerging risks applicable to the Corporation. The training should involve courses on corporate governance matters relevant to the Corporation, including audit, internal controls, risk management, sustainability and strategy.

7.3 The Board may also require its directors and key officers to attend such other seminars or training as may it may deem reasonably necessary for the efficient discharge of their respective functions, or as may be required by the SEC and the PSE.

8. AMENDMENT

⁶⁷ Section 6, Manual.

This Board Charter shall not be amended, altered or varied unless such amendment, alteration or variation shall have been approved by a resolution of the Board.

Adopted by the Board of Directors of San Miguel Food and Beverage, Inc. on August 7, 2019.