



## **VIVANT CORPORATION REVISED MANUAL ON CORPORATE GOVERNANCE**

The Board of Directors and Management, i.e., officers and staff of Vivant Corporation, hereby commit themselves to the principles and best practices contained in this Manual of Corporate Governance (the "Manual"), and acknowledge that the same may guide the attainment of their corporate goals.

### **I. OBJECTIVE**

This Manual shall institutionalize the principles of good corporate governance in the entire organization of Vivant Corporation (the "Corporation").

The Board of Directors and Management, employees and shareholders of the Corporation, believe that corporate governance is a necessary component of what constitutes sound strategic business management and will, therefore, undertake every effort necessary to create awareness within the organization as soon as possible.

### **II. BOARD GOVERNANCE**

#### **Board Governance**

The Board of Directors (the "Board") is primarily responsible for the governance of the Corporation. Corollary to setting the policies for the accomplishment of the corporate objectives, it shall provide an independent check on Management.

#### **(a) Composition of the Board**

The Board shall be composed of eleven (11) members who are elected by stockholders, two (2) of whom shall be independent directors.

The membership of the Board may be a combination of executive and non-executive directors (which include independent directors) in order that no director or small group of directors can dominate the decision-making process.

The non-executive directors should possess such qualifications and stature that would enable them to effectively participate in the deliberations of the Board.

### **(b) Multiple Board Seats**

The Board may consider the adoption of guidelines on the number of directorships that its members can hold in stock and non-stock corporations. The optimum number should take into consideration the capacity of a director to diligently and efficiently perform his duties and responsibilities.

The President/Chief Executive Officer ("CEO") and other executive directors may be covered by a lower indicative limit for membership in other boards. A similar limit may apply to independent or non-executive directors who, at the same time, may serve as full-time executives in other corporations. In any case, the capacity of the directors to diligently and efficiently perform their duties and responsibilities to the boards they serve should not be compromised.

### **(c) The Chairman and President/Chief Executive Officer**

The roles of Chairman and President/CEO should, as much as practicable, be separate to foster an appropriate balance of power, increased accountability and better capacity for independent decision-making by the Board. A clear delineation of functions should be made between the Chairman and CEO upon their election.

If the positions of Chairman and President/CEO are unified, the proper checks and balances should be laid down to ensure that the Board gets the benefit of independent views and perspectives.

The duties and responsibilities of the Chairman in relation to the Board may include, among others, the following:

- (i) Ensure that the meetings of the Board are held in accordance with the by-laws or as the Chairman may deem necessary;
- (ii) Supervise the preparation of the agenda of the meeting in coordination with the Corporate Secretary, taking into consideration, the suggestions of the President/CEO, Management, and the directors; and
- (iii) Maintain qualitative and timely lines of communication and information between the Board and Management.

### **(d) Qualifications of Directors**

In addition to the qualifications for membership in the Board provided for in the Corporation Code, Securities Regulation, Code and other relevant laws, a member of the Board must possess the following:

- (i) College education or equivalent academic degree;
- (ii) Practical understanding of the business of the Corporation;





- (iii) Membership in good standing in relevant industry, business or professional organizations; and
- (iv) Previous business experience.

**(e) Disqualification of Directors**

**1. Permanent Disqualification**

The following shall be grounds for the permanent disqualification of a director:

- (i) 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 Securities Regulation Code; (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.
- (ii) 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) or any court or administrative body of competent jurisdiction from: (a) acting as underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; (b) acting as director or officer to 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 sub-paragraphs (a) and (b) above, or willfully violating the laws that govern securities and banking activities.

The disqualification shall also apply if such person is currently the subject of an order of the Commission, or any court or administrative body denying, revoking or suspending, any registration, license or permit issued to him under the Corporation Code, Securities Regulation Code or any other law administered by the Commission or Bangko Sentral ng Pilipinas (BSP), or under any rule or regulation issued by the SEC BSP, or has otherwise been restrained to engage in any activity involving securities and banking; or such person 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;

- (iii) Any person convicted by final judgment or order by a court or competent administrative body of an offense involving moral turpitude, fraud, embezzlement, theft, estafa, counterfeiting, misappropriation, forgery, bribery, false affirmation, perjury or other fraudulent acts;



- (iv) Any person who has been adjudged by final judgment or order of the SEC, court, or competent administrative body to have willfully violated, or willfully aided, abetted, counseled, induced or procured the violation of any - provision of the Corporation Code, Securities Regulation Code or any other law administered by the SEC or BSP, or any of its rule, regulation or order;
- (v) Any person earlier elected as independent director who becomes an officer, employee or consultant of the same corporation;
- (vi) Any person judicially declared as insolvent;
- (vii) 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 enumerated in sub-paragraphs (i) to (v) above;
- (viii) Conviction by final judgment of an offense punishable by imprisonment for more than six (6) years, or a violation of the Corporation Code committed within five (5) years prior to the date of his election or appointment.

## 2. Temporary Disqualification

A director may be temporarily disqualified under the following grounds:

- (i) Refusal to comply with the disclosure requirements of the Securities Regulation Code and its Implementing Rules and Regulations. The disqualification shall be in effect as long as the refusal persists.
- (ii) Absence in more than fifty (50) percent of all regular and special meetings of the Board during his incumbency, or any twelve (12) month period during the said incumbency, unless the absence is due to illness, death in the immediate family or serious accident. The disqualification shall apply for purposes of the succeeding election.
- (iii) Dismissal or termination for cause as director of any corporation covered by this Code. The disqualification shall be in effect until he has cleared himself from any involvement in the cause that gave rise to his dismissal or termination.
- (iv) 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 is the limit is later complied with.
- (v) If any of the judgments or orders cited in the grounds for permanent disqualification has not yet become final.





A temporarily disqualified director shall, within six (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 permanent.

**(f) Responsibilities, Duties and Functions of the Board**

1. General Responsibility

It is the Board's responsibility 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 best interests of its stockholders **and other stakeholders**.

The Board should formulate the Corporation's vision, mission, strategic objectives, policies and procedures that shall guide its activities, including the means to effectively monitor Management's performance.

2. Duties and Functions

To ensure a high standard of best practice for the Corporation and its stockholders **and other stakeholders**, the Board should conduct itself with honesty and integrity in the performance of among others, the following duties and functions:

- a) Implement a process for the selection of directors who can add value and contribute independent judgment to the formulation of sound corporate strategies and policies. Appoint competent, professional, honest and highly-motivated management officers. Adopt an effective succession planning program for Management.
- b) Provide sound strategic policies and guidelines to the Corporation on major capital expenditures. Establish programs that can sustain its long-term viability and strength. Periodically evaluate and monitor the implementation of such policies and strategies, including the business plans, operating budgets and Management's overall performance.
- c) Ensure the Corporation's faithful compliance with all applicable laws, regulations and best business practices.
- d) Establish and maintain an investor relations program that will keep the stockholders **and other stakeholders** informed of important developments in the Corporation. If feasible, the Corporation's CEO or chief financial officer shall exercise oversight responsibility over this program.
- e) Identify the sectors **Corporation's stakeholders** in the community in which the Corporation operates or are directly affected by its operations, and formulate a clear policy of accurate, timely and effective communication with them.

- f) Adopt a system of check and balance within the Board. A regular review of the effectiveness of such system should be conducted to ensure the integrity of the decision-making and reporting processes at all times. There should be a continuing review of the Corporation's internal control system in order to maintain its adequacy and effectiveness.
- g) Identify key risk areas and performance indicators and monitor these factors with due diligence to enable the Corporation to anticipate and prepare for possible threats to its operational and financial viability.
- h) Formulate and implement policies and procedures that would ensure the integrity and transparency of related party transactions between and among the Corporation and its parent company, joint ventures, subsidiaries, associates, affiliates, major stockholders, officers and directors, including their spouses, children and dependent siblings and parents, and of interlocking director relationships by members of the Board.
- i) Constitute an Audit Committee and such other committees it deems necessary to assist the Board in the performance of its duties and responsibilities.
- j) Establish and maintain an alternative dispute resolution system in the Corporation that can amicably settle conflicts or differences between the Corporation and its stockholders and other stakeholders, and the Corporation and third parties, including the regulatory authorities.
- k) Meet at such times or frequency as may be needed. The minutes of such meetings should be duly recorded. Independent views during Board meetings should be encouraged and given due consideration.
- l) Keep the activities and decisions of the Board within its authority under the Articles of Incorporation and By-laws, and in accordance with existing laws, rules and regulations.
- m) Appoint a Compliance Officer who shall have the rank of at least vice president. In the absence of such appointment, the Corporate Secretary, preferably a lawyer, shall act as Compliance Officer.

**g) Specific Duties and Responsibilities of a Director**

A director's office is one of trust and confidence. A director should act in the best interest of the Corporation in a manner characterized by transparency, accountability and fairness. He should also exercise leadership, prudence and integrity in directing the Corporation towards sustained progress.

A director should observe the following norms of conduct:



Conduct fair business transactions with the Corporation, and ensure that his personal interest does not conflict with the interest of the Corporation.

The basic principle to be observed is that a director should not use his position to profit or gain some benefit or advantage for himself and/or his related interests. He should avoid situations that may compromise his impartiality. If an actual or potential conflict of interest may arise on the part of a director, he should fully and immediately disclose it and should not participate in the decision-making process. A director who has a continuing material conflict of interest should seriously consider resigning from his position.

A conflict of interest shall be considered material if the director's personal or business interest is antagonistic to that of the Corporation, or stands to acquire or gain financial advantage at the expense of the Corporation.

Devote the time and attention necessary to properly and effectively perform his duties and responsibilities.

A director should devote sufficient time to familiarize himself with the Corporation's business. He should be constantly aware of and knowledgeable with the Corporation's operations to enable him to meaningfully contribute to the Board's work. He should attend and actively participate in Board and committee meetings, review meeting materials and, if, called for, ask questions or seek explanation.

Act judiciously.

Before deciding on any matter brought before the Board, a director should carefully evaluate the issues and, if necessary, make inquiries and request, clarification.

(i) Exercise independent judgment.

A director should view each problem or situation objectively. If a disagreement with other directors arises, he should carefully evaluate and explain his position. He should not be afraid to take an unpopular position. Corollarily, he should support plans and ideas that he thinks are beneficial to the Corporation.

(ii) Have a working knowledge of the statutory and regulatory requirements that affect the Corporation, including its articles of incorporation and by-laws, the rules and regulations of the Commission and, where applicable, the requirements of relevant regulatory agencies.

A director should also keep abreast with industry developments and business trends in order to promote the Corporation's competitiveness.

(iii) Observe confidentiality.

A director should keep secure and confidential all non-public information he may acquire or learn by reason of his position as director. He should not reveal confidential information to unauthorized persons without the authority of the Board.

#### **h) Internal Control Responsibilities of the Board**

The control environment of the Corporation consists of (a) the Board which ensures that the Corporation is properly and effectively managed and supervised; (b) a Management that actively manages and operates the Corporation in a sound and prudent manner; (c) the organizational and procedural controls supported by effective management information and risk management reporting systems; and (d) an independent audit mechanism 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.

- (i) The minimum internal control mechanisms for the performance of the Board's oversight responsibility includes:
  - (a) Definition of the duties and responsibilities of the President/CEO who is ultimately accountable for the Corporation's organizational and operational controls;
  - (b) Selection of the person who possesses the ability, integrity and expertise essential for the position of President/CEO;
  - (c) Evaluation of proposed senior management appointments;
  - (d) Selection and appointment of qualified and competent management officers; and
  - (e) Review of the Corporation's human resource policies, conflict of interest situations, compensation program for employees, and management succession plan.

#### **i) Board Meetings and quorum Requirement**

The members of the Board should attend its regular and special meetings in person or through teleconferencing conducted in accordance with the rules and regulations of the Commission.

Independent directors should always attend Board meetings. However, their absence shall not affect the quorum requirement.

To monitor the directors' compliance with the attendance requirement, the Corporation shall submit to the SEC, on or before January 30 of the following year, a sworn certification about the





- (5) Prior to the commencement of the audit, discuss with the external auditor the nature, scope and expenses of the audit, and ensure proper coordination if more than one audit firm is involved in the activity to secure proper coverage and minimize duplication of efforts;
- (6) Organize an internal audit department, and consider the appointment of an independent internal auditor and the terms and conditions of its engagement and removal;
- (7) Monitor and evaluate the adequacy and effectiveness of the Corporation's internal control system, including financial reporting control and information technology security;
- (8) Review the reports submitted by the internal and external auditors;
- (9) Review the quarterly, half-year and annual financial statements before their submission to the Board, with particular focus on the following matters:
  - Any change/s in accounting policies and practices
  - Major judgmental areas
  - Significant adjustments resulting from the audit
  - Going concern assumptions
  - Compliance with accounting standards
  - Compliance with tax and legal requirements
- (10) Coordinate, monitor and facilitate compliance with rules and regulations;
- (11) Evaluate, and determine the non-audit work, if any, of the external auditor, and review periodically the non-audit fees paid to the external auditor in relation to their significance to the total annual income of the external auditor and to the Corporation's overall consultancy expenses. The committee shall disallow any non-audit work that will conflict with his duties as an external auditor or may pose a threat to his independence. The non-audit work, if allowed, should be disclosed in the Corporation's annual report;
- (12) Establish and identify the reporting line of the Internal Auditor to enable him to properly fulfill his duties and responsibilities. He shall functionally report directly to the Audit Committee.

The Audit Committee shall ensure that, in the performance of the work of the Internal Auditor, he shall be free from interference by outside parties.

- (ii) The Nomination Committee

The Nomination Committee shall be composed of at least three (3) members and one of whom should be an independent director, to review and evaluate the qualifications of all persons nominated to the Board and other appointments that require Board approval, and to assess the effectiveness of the Board's processes and Procedures in the election or replacement of director.

(iii) The Compensation or Remuneration Committee

The Compensation or Remuneration Committee shall be composed of at least three (3) members and one of whom should be an independent director, to establish a formal and transparent procedure for developing a policy on remuneration of directors and officers to ensure that their compensation is consistent with the Corporation's culture, strategy and the business environment in which it operates.

**I) The Corporate Secretary**

The Corporate Secretary, should be a Filipino citizen and a resident of the Philippines, is an officer of the Corporation. He should:

- (i) Be responsible for the safekeeping and preservation of the integrity of the minutes of the meetings of the Board and its committees, as well as the other official records of the Corporation;
- (ii) Be loyal to the mission, vision and objectives of the Corporation;
- (iii) Work fairly and objectively with the Board, Management, stockholders, **and other stakeholders**;
- (iv) Have appropriate administrative and interpersonal skills;
- (v) If he is not at the same time the Corporation's legal counsel, be aware of the law, rules and regulations necessary in the performance of his duties and responsibilities;
- (vi) Have a working knowledge of the operations of the Corporation;
- (vii) Inform the members of the Board, in accordance with the by-laws, of the agenda of their meetings and ensure that the members have before them accurate information that will enable, them to arrive at intelligent decisions on matters that require their approval;
- (viii) Attend all Board meetings, except when justifiable causes, such as, illness, death in the immediate family and serious accidents, prevent him from doing so;
- (ix) Ensure that all Board procedures, rules and regulations are strictly followed by the members; and



- (x) If he is also the Compliance Officer, perform all the duties and responsibilities of the said officer as provided for in this Code.

**(m) The Compliance Officer**

The Board shall appoint a Compliance Officer who shall report directly to the Chairman of the Board. He shall perform the following duties:

- (i) Monitor compliance by the Corporation with this Code and the rules and regulations of regulatory agencies and, if any violations are found, report the matter to the Board and recommend the imposition of appropriate disciplinary action on the responsible parties and the adoption of measures, to prevent a repetition of the violation;
- (ii) Appear before the SEC when summoned in relation to compliance with this Code; and
- (iii) Issue a certification every January 30th of the year on the extent of the Corporation's compliance with this Manual for the completed year and, if there are any deviations, explain the reason for such deviation.

**III. ADEQUATE AND TIMELY INFORMATION**

To enable the members of the Board to properly fulfill their duties and responsibilities, Management should provide them with complete, adequate and timely information about the matters to be taken in their meetings.

Reliance on information volunteered by Management would not be sufficient in all circumstances and further inquiries may have to be made by a member of the Board to enable him to properly perform his duties and responsibilities. Hence, the members should be given independent access to Management and the Corporate Secretary.

The information may include the background or explanation on matters brought before the Board, disclosures, budgets, forecasts and internal financial documents.

The members, either individually or as a Board, and in furtherance of their duties and responsibilities, should have access to independent professional advice at the Corporation's expense.

**IV. ACCOUNTABILITY AND AUDIT**

The Board is primarily accountable to the stockholders and other stakeholders. It should provide them with a balanced and comprehensible assessment on the Corporation's performance,

position and prospects on a quarterly basis, including interim and other reports that could adversely affect its business, as well as reports to regulators that are required by law.

Thus, it is essential that management provide all members of the Board with accurate and timely information that would enable the Board to comply with its responsibilities to the stockholders **and other stakeholders.**

Management should formulate, under the supervision of the Audit Committee, the rules and procedures on financial reporting and internal control in accordance with the following guidelines:

- (i) The extent of its responsibility in the preparation of the financial statements of the Corporation, with the corresponding delineation of the responsibilities that pertain to the external auditor, should be clearly explained;
- (ii) An effective system of internal control that will ensure the integrity of the financial reports and protection of the assets of the Corporation should be maintained **for the benefit of all stockholders and other stakeholders;**
- (iii) On the basis of the approved audit plans, internal audit examinations should cover, at the minimum, the evaluation of the adequacy and effectiveness of controls that cover the Corporation's governance, operations and information systems, including the reliability and integrity of financial and operational information, effectiveness and efficiency of operations, protection of assets, and compliance with contracts, laws, rules and regulations;
- (iv) The Corporation should consistently comply with the financial reporting requirements of the SEC;
- (v) The external auditor should be rotated or changed every five (5) years or earlier; or the signing partner of the external auditing firm assigned to the Corporation, should be changed with the same frequency. The Internal Auditor should submit to the Audit Committee and Management an annual report on the internal audit department's activities, responsibilities and performance relative to the audit plans and strategies as approved by the Audit Committee. The annual report should include significant risk exposures, control issues and such other matters as may be needed or requested by the Board and Management. The Internal Auditor should certify that he conducts his activities in accordance with the International Standards on the Professional Practice of Internal Auditing. If he does not, he shall disclose to the Board and Management the reasons why he has not fully complied with the said standards.

The Board, after consultations with the Audit Committee shall recommend to the stockholders an external auditor duly accredited by the SEC who shall undertake an independent audit of the Corporation, and shall provide an objective assurance on the manner by which the financial statements shall be prepared and presented to the stockholders. The external auditor shall not, at



the same time, provide internal audit services to the Corporation. Non-audit work may be given to the external auditor, provided it does not conflict with his duties as an independent auditor, or does not pose a threat to his independence.

If the external auditor resigns is dismissed or ceases to perform his services, the reason/s for and the date of effectivity of such action shall be reported in the Corporation's annual and current reports. The report shall include a discussion of any disagreement between him and the Corporation on accounting principles or practices, financial disclosures or audit procedures which the former auditor and the Corporation failed to resolve satisfactorily. A preliminary copy of the said report shall be given by the Corporation to the external auditor before its submission.

If the external auditor believes, that any statement made in an annual report, information statement or any report filed with the SEC or any regulatory body during the period of his engagement is incorrect or incomplete, he shall give his comments or views on them in the said reports.

## **V. STOCKHOLDERS' RIGHTS AND PROTECTION OF MINORITY STOCKHOLDERS' INTERESTS**

The Board shall respect the rights of the stockholders as provided for in the Corporation Code, namely:

- (i) Right to vote on all matters that require their consent or approval;
- (ii) Pre-emptive right to all stock issuances of the Corporation;
- (iii) Right to inspect corporate books and records;
- (iv) Right to information;
- (v) Right to dividends;
- (vi) Appraisal right.

The Board should be transparent and fair in the conduct of the annual and special stockholders' meetings of the Corporation. The stockholders should be encouraged to personally attend such meetings. If they cannot attend, they should be apprised ahead of time of their right to appoint a proxy. Subject to the requirements of the by-laws, the exercise of that right shall not be unduly restricted and any doubt about the validity of a proxy should be resolved in the stockholder's favor.

It is the duty of the Board to promote the rights of the stockholders, remove impediments to the exercise of those rights and provide an adequate avenue for them to seek timely redress for breach of their rights.

The Board should take the appropriate steps to remove excessive or unnecessary costs and other administrative impediments to the stockholders' meaningful participation in meetings, whether in person or by proxy. Accurate and timely information should be made available to the stockholders to enable them to make a sound judgment on all matters brought to their attention for consideration or approval.

Although all stockholders should be treated equally or without discrimination, the Board should give minority stockholders the right to propose the holding of meetings and the items for discussion in the agenda that relate directly to the business of the Corporation.

## **VI. GOVERNANCE SELF-RATING SYSTEM**

The Board may create an internal self-rating system that can measure the performance of the Board and Management in accordance with the criteria provided for in this Code. The creation and implementation of such self-rating system, including its salient features, may be disclosed in the Corporation's annual report.

## **VII. DISCLOSURE AND TRANSPARENCY**

The essence of corporate governance is transparency: The more transparent the internal workings of the Corporation are, the more difficult it will be for Management and dominant stockholders to mismanage the Corporation or misappropriate its assets.

It is, therefore, essential that all material information about the Corporation which could adversely affect its viability or the interests of the stockholders **and other stakeholders** should be publicly and timely disclosed. Such information should include, among others, earnings results, acquisition or disposition of assets, off-balance sheet transactions, related party transactions, and direct and indirect remuneration of members of the Board and Management. ~~All such information should be disclosed through the appropriate Exchange mechanism and submissions to the SEC.~~

**The Board shall, therefore, commit at all times to full disclosure of material information dealings. It shall cause the filing of all required information through the appropriate Exchange mechanisms for listed companies and submissions to the SEC for the interest of its stockholders and other stakeholders.**

## **VIII. COMMITMENT TO GOOD CORPORATE GOVERNANCE**

The Corporation is committed to good corporate governance. It shall regularly comply with the governance self-rating system that may be implemented by the SEC or the Philippine Stock Exchange. This Manual shall be made available for inspection by any shareholder at reasonable hours on business days.

Signed on 16<sup>th</sup> day of June 2014 at Cebu City, Philippines.

  
**DENNIS W. GARCIA**  
Chairman of the Board