Corporations as Partners in a Philippine Civil Code Partnership: Innovations in the Revised Corporation Code

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I. INTRODUCTION

By the time Republic Act No. 11232 or the Revised Corporation Code of the Philippines (Revised Corporation Code)[1] was enacted into law in February 2019, pervasive conjectures had already been rife about the major reforms and innovations the new law would usher.

The Philippine Senate trumpeted the passage of Republic Act No. 11232 as codifying international best practices "in order to make the Philippines an attractive investment destination that is conducive to business and entrepreneurship."[2] Senator Franklin M. Drilon, one of the new law's principal proponents, assured and prognosticated that the Revised Corporation Code strengthens corporate governance standards towards greater ease in doing business, thereby making our economy "more competitive with the rest of the world."[3]

The key reforms introduced by the Revised Corporation Code covered four stated key areas of corporate governance:

(1) "improving the ease of business in the country[;]"[4]

(2) "prioritizing corporate and stockholder protection[;]"[5]

(3) "instilling corporate and civic responsibility[;]"[6] and

(4) "strengthening the country's policy and regulatory corporate framework."[7]

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1. An Act Providing for the Revised Corporation Code of the Philippines [REV. CORP. CODE], Republic Act No. 11232 (2019).

2. Senate of the Philippines, Drilon lauds signing of Revised Corporation Code, *available at* https://www.senate.gov.ph/press_release/2019/0221_drilon1.asp (last accessed Nov. 30, 2019).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

Perhaps foremost among the touted innovations was the introduction of the concept of the One Person Corporation (OPC) which permits a single natural person, estate, or trust to establish, own, and operate a corporate entity without having to associate herself or himself with the heretofore required minimum of four other persons who would act as incorporators and directors.[8]

The paradigm-shifting corporate alternative was well worth the excitation it received considering the significant potential for convenience and efficiency that this altogether new form of business enterprise could bring to entrepreneurs.

Apart from the OPC, which is an entirely new legislative introduction, the Revised Corporation Code singles out the so-called *corporations vested with public interest*,[9] with a view of setting higher corporate governance standards for these types of corporations. Thus, corporations vested with public interest are required to have at least 20% of the members of their boards of directors composed of independent directors and must likewise employ a compliance officer as an additional statutory corporate officer.[10]

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8. *See generally* REV. CORP. CODE, tit. XIII, ch. 3, §§ 115-132.

9. Under Section 22 of the Revised Corporation Code, the following are corporations are considered as vested with public interest:

> (1) Corporations covered by Section 17.2 of Republic Act No. 8799, otherwise known as "The Securities Regulation Code," namely those whose securities are registered with the Commission, corporations listed with an exchange or with assets of at least Fifty [M]illion pesos (50,000,000.00) and having two hundred (200) or more holders of shares, each holding at least one hundred (100) shares of a class of its equity shares;
>
> (2) Banks and quasi-banks, NSSLAs, pawnshops, corporations engaged in money service business, preneed, trust and insurance companies[,] and other financial intermediaries; and
>
> (3) Other corporations engaged in businesses vested with public interest similar to the above, as may be determined by the Commission, after taking into account relevant factors which are germane to the objective and purpose of requiring the election of an independent director, such as the extent of minority ownership, type of financial products or securities issued or offered to investors, public interest involved in the nature of business operations, and other analogous factors.

REV. CORP. CODE, tit. III, § 22.

10. *Id.*

Stockholder rights are enhanced in the Revised Corporation Code through, among others, an expansion of the corporate documents mandated to be maintained by corporations as part of their records made available for stockholder inspection.[11] In addition, learning from disruptive corporate infighting and deadlocks in the past, the Revised Corporation Code empowers stockholders to thwart machinations that prevent elections of board members from taking place by the simple expedient of preventing the existence of a quorum.[12] In Section 25 of the Revised Corporation Code, minority stockholders may actually constitute a valid quorum for director election purposes under certain extreme circumstances.[13]

The new statute likewise seeks to encourage and facilitate the establishment of corporations by removing the former minimum subscription and paid-in capital requirements at incorporation as well as the minimum number of incorporators.[14]

These modifications and other considerable changes to the then-existing laws on corporations justified the level of hype preceding the adoption of the Revised Corporation Code.

II. CORPORATIONS AS PARTNERS

An interesting, though rather unobtrusive, amendment by the Revised Corporation Code to the former Corporation Code[15] is that found in Section 35 which states that "[e]very corporation incorporated under this Code has the power and capacity[... t]o enter into a partnership, joint venture, merger, consolidation, or any other commercial agreement with natural and juridical persons[.]"[16]

11. *Id.* § 73.

12. *Id.* § 103.

13. *Id.* § 25.

14. *See* REV. CORP. CODE, §§ 10 & 12.

15. The Corporation Code of the Philippines [CORP. CODE], Batas Pambansa Blg. 68, § 36 (1980) (repealed 2019).

16. REV. CORP. CODE, § 35 (h).

The prior version of the foregoing provision stated only that corporations had the power and capacity to enter into mergers and consolidations.[17]

As a juridical person, a corporation is empowered to enter into commercial contracts,[18] including joint venture agreements. But an issue that had been somewhat uncertain previously but has achieved legislative certainty now is that corporations, as a matter of statutory right, may become partners in a Philippine partnership that possesses a separate juridical entity.

This optically miniscule amendment in Section 35 (h) is significant in that it was not entirely settled in the past that corporations could legally become partners in a Philippine law partnership. The weight of authority then was that, as a rule, they could not.

III. PARTNERSHIP OF CORPORATIONS: EARLY LEGAL THEORIES AND ADMINISTRATIVE LIBERALIZATION

Time was when the generally accepted legal theory was that a corporation was prohibited from forming a partnership in which such corporation would act as a partner — given the fundamental dissimilarities that exist in the nature of the liability of the individuals composing either the partnership or the corporation. While partners are personally liable for the debts of the partnership which its assets cannot satisfy, stockholders of a corporation cannot be made to personally answer to corporate creditors beyond the amount which they have contributed or have promised to contribute to the corporate capital.[19]

Another factor of much influence oft asserted in support of the position that corporations may not become partners in a partnership relates to the aspect of management. In a partnership, all owner-partners actively participate in the management and business decisions. In fact, every partner has the capacity to bind the partnership by any usual contract in the ordinary course of business.[20]

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17. CORP. CODE, § 36 (8).

18. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 46 (1950).

19. *See* People ex rel. Winchester v. Coleman, 133 N.Y. 279 (1892) (U.S.). This case, in gist, discussed the legislative intent to distinguish between a joint stock company or association and a corporation, stating that "the creation of the corporation merges in the artificial body and drowns in it the individual rights and liabilities of the members, while the organization of a joint-stock company leaves the individual rights and liabilities unimpaired and in full force." *Id.* at 284.

20. CIVIL CODE, art. 1818.

In contrast, a corporation possesses the primary attribute of centralized management which, thus, excludes stockholders who are not members of the board from taking part in a corporation's management.[21]

Essentially, however, these roadblocks were theoretical in nature at best, which could be tested given dynamic demands of the evolving business environment. Thus, on multiple occasions, the Securities and Exchange Commission (SEC) has had to respond to inquiries and take a position on whether or not corporations may be partners in a Philippine law partnership.

Citing an Opinion issued as early as 22 December 1966, the Director of the SEC's Corporate and Legal Department issued an Opinion dated 29 February 1980 addressed to the Ministry of Public Highways,[22] reiterating its previous Opinions which confirmed that corporations, as a general rule, could not become partners in a Philippine partnership, on the bases of American-sourced public policy that posited that

> '[a]ccording to the prevailing view, a corporation has no implied power to become a partner with an individual or another corporation. This limitation is based on public policy, since in a partnership the corporation would be bound by the acts of persons who are not duly appointed and authorized agents and officers, which would be entirely inconsistent with the policy of the law that the corporation shall manage its own affairs, separately and exclusively[.]'
>
> 'It is fairly well-settled that corporations cannot ordinarily enter into partnerships with other corporations or individuals, for, in entering into a partnership[,] the identity of the corporation is lost or merged with that of another[,] and the direction of the affairs is placed in other hands than those permitted by the law of its creation. A corporation can act only through its duly authorized agents and is not bound by the acts of anyone else, while in a partnership each member binds the firm when acting within the scope of the partnership.'[23]

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21. REV. CORP. CODE, § 22.

22. Securities and Exchange Commission, SEC Opinion, at *1 (Feb. 29, 1980).

23. *Id.* (citing AM. JUR., ¶ 823; 6 WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS, § 2520 (1917); & Securities and Exchange Commission, SEC Opinion, Dec. 22, 1966).

In the same Opinion, however, the SEC expressed the view that the restriction was not an absolute one, and corporations *might* actually become partners in a Philippine law partnership if:

> (1) [their] articles of incorporation [ ]expressly authorize them to enter into contracts of partnership with others in the pursuit of their business,
>
> (2) the [partnership] agreement or articles of partnership provide[s] that all the partners will manage the partnership; and
>
> (3) the articles of partnership must stipulate that all the partners are and shall be [solidarily] liable for [partnership obligations].[24]

The criteria outlined by the SEC essentially reveals that: (a) the power to establish, or become a partner in, a Philippine partnership is not an inherent power of corporations; and (b) if corporations were to become partners in a partnership, they can only do so, and, thus, be liable as general partners.

In February 1994, the law firm of Romulo Mabanta Buenaventura Sayoc & de los Angeles sought to argue with the SEC on the basis of the exceptions set out by them.[25] They posited that corporations should likewise be permitted to become *limited* partners in a Philippine limited partnership since, under the Civil Code, a limited partner is given the *option to take part in the management* of the partnership in addition to the rights of a limited partner.[26]

The SEC at that time, however, was unprepared to accede to that argument and instead asserted that

> [t]he second condition requiring that all corporate partners in a partnership shall take part in the management was imposed so that the above argument against surrendering the management to others will not apply. If a corporation is allowed to be a limited partner only, there is no assurance that the corporate partner shall participate in management of the partnership as required and this may create a situation wherein the corporation may not be bound by the acts of the partnership in the event that, as a limited partner, it opts not to participate in the management, thereby defeating the intention of the present policy requiring that all the partners of a partnership composed of corporations shall be jointly and severally liable for all the obligations of the partnership.[27]

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24. *Id.*

25. Securities and Exchange Commission, SEC Opinion, at *2 (Feb. 23, 1994).

26. *Id.*

27. *Id.*

Slightly over a year later, however, the SEC was persuaded to reverse itself on that same question. In an Opinion dated 17 August 1995,[28] the SEC acceded to the following justifications for permitting corporations to become limited partners in a limited partnership:

> (1) Just as a corporate investor has the power to make passive investments in other corporations by purchasing stock, corporate investor should also be allowed to make passive investments in partnerships as a limited partner. By being a limited partner, the corporation would not be bound beyond the amount of its investment by the acts of the other partners who are not its duly appointed and authorized agents and officers. Hence, the very reason why as a general rule, a corporation cannot enter into a contract of partnership, as stated in the 1966 SEC opinion, would no longer be present, as the corporation, which is merely a limited partner, will now be protected from the unlimited liability of the other partners who are not agents or officers of the corporation.
>
> (2) Section 42 of the Corporation Code which permits a corporation to invest its funds in another corporation or business, does not require that the investing corporation be involved in the management of the investee corporation with a view to protect its investment therein. Under said provision, the management of the other entity is not a pre-condition to the validity of such investment. By entering into a contract of limited partnership, a corporation would continue to manage its own corporate affairs while validly abstaining from participation in the management of the entity in which it has invested. Accordingly, as there is generally no threat that a corporate limited partner would be solidarily liable with the partnership, there would be no reason for requiring a corporate partner to actually manage the partnership, if it makes the business decision not to do so and opts to become a limited partner.
>
> (3) The SEC policy that a corporation cannot enter into a limited partnership, is an offshoot of the outdated view in the United States [(US)], that, as a general rule, corporations could not form a partnership; that corporations cannot become limited partners, is based on an assumption which is no longer current. Jurisprudence and common commercial practice in the US, indicate that corporations are not barred from acting as limited partners. Current American laws support the position that a corporation can enter into a contract of limited partnership. For example, the Revised Uniform Limited Partnership Act of 1976 (as amended in 1985), specifically confirms, that corporations

28. Securities and Exchange Commission, SEC Opinion (Aug. 17, 1995).

> may act as limited partners. Almost all states in the US have adopted limited partnership laws which provide, in the same manner as the Revised Uniform Limited Partnership Act, that corporations may act as limited partners. This indicates that many other jurisdictions simply follow the broad language of the Revised Model Business Corporations Act which suggests that corporations may act as limited partners and in no event prohibits that activity. These statutes reaffirm what is indicated by the commercial practice in the US, that corporations can act as limited partners. The proliferation of statutes reversing the doctrine forbidding corporations to become partners is proof of the unsoundness of and dissatisfaction with such doctrine.[29]

In accepting the foregoing ratiocination, the SEC declared its concurrence with the ability of corporations to act as limited partners, founded upon both legal and public policy grounds, adding that

> inasmuch as there is no existing Philippine law that expressly prohibits a corporation from becoming a limited partner in a partnership, the Commission is inclined to adopt your view on the matter, provided, that the two other conditions above-mentioned are complied with. We agree with your statement that a reconsideration of the present policy of the Commission on the matter is timely in order to permit the Philippine commercial environment to maintain its pace in terms of legal infrastructure with similar developments in the international arena with a view to encouraging and facilitating greater domestic and foreign investments in Philippine business enterprise.[30]

Having issued an administrative interpretation that permitted corporations to become both general and limited partners in a Philippine partnership, the SEC further clarified additional requirements in cases where a foreign corporation was to become a partner in a Philippine partnership.

The SEC clarified that there was no requirement for a foreign corporation to obtain a license to do business in the Philippines, provided that the limited partner would not take part in the management of the partnership.[31] The SEC agreed with the view that a foreign corporation becoming a limited partner in a Philippine partnership was akin to a foreign person investing in the equity of a stock corporation which, under statutory definitions, does not constitute

29. *Id.* at **2–3.

30. *Id.* at *3.

31. Securities and Exchange Commission, SEC Opinion, at *1 (Aug. 6, 1998).

the doing of business in the Philippines for which a license would have otherwise been required.[32]

Finally, in its Opinion issued in 7 September 1998,[33] where a structure was contemplated involving a foreign corporation as general partner and a domestic corporation as a limited partner, the SEC enumerated the following requirements:

> (1) That the authority to enter into a partnership relation as a general partner is expressly conferred by the charters or articles of incorporation of the foreign partner; the nature of the business venture to be undertaken by the partnership is in line with the business authorized by the charter or articles of incorporation; and the investment of the foreign partner is allowable under the Foreign Investments Act[;]
>
> (2) That the foreign partner must obtain a license to transact business in the Philippines in accordance with the Corporation Code and Foreign Investments Act[; and]
>
> (3) [That t]he articles of partnership shall stipulate that the foreign partner, being the general partner shall be liable for all the obligations of the partnership; that its liability shall not be limited to its contribution to the partnership but extends to the assets of the foreign company; that its liability shall not terminate even after the dissolution of the partnership so as not to relieve the foreign partner of its obligations incurred by reason of its entering into the partnership as a general partner; and that the resident agent of the foreign company shall be jointly and severally liable with the foreign principal.[34]

IV. SETTLING THE JOINT VENTURE CONUNDRUM

A by-product of the legal question of whether or not corporations were restricted from becoming partners in a Philippine partnership is the question of whether corporations were similarly restricted from entering into a joint venture under a theory that *ipso facto* equated joint ventures as partnerships under the Civil Code.

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32. *Id.*

33. Securities and Exchange Commission, SEC Opinion (Sep. 7, 1998).

34. *Id.* at *1.

In the 1989 case of *Aurbach v. Sanitary Wares Manufacturing Corp.*,[35] the Supreme Court approvingly cited the analysis proffered in the writings of legal theorists José C. Campos and Maria Clara Lopez-Campos, which distinguished a partnership from a joint venture under applicable Philippine law —

> The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. ... It is in fact hardly distinguishable from the partnership, since their elements are similar — community of interest in the business, sharing of profits and losses, and a mutual right of control. ... The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is[,] thus[,] of a temporary nature. ... This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. ... *It would seem*[,] *therefore*[,] *that under Philippine law, a joint venture is a form of partnership and should*[,] *thus*[,] *be governed by the law of partnerships. The Supreme Court has*[,] *however*[,] *recognized a distinction between these two business forms, and has held that*[,] *although a corporation cannot enter into a partnership contract, it may*[,] *however*[,] *engage in a joint venture with others*.[36]

In a series of opinions, the SEC relied upon the reasoning in *Aurbach* as support for its position that, while corporations may be restricted from becoming partners in a partnership, there is no restriction on corporations contractually entering into joint venture arrangements.[37]

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35. Aurbach v. Sanitary Wares Manufacturing Corp., 180 SCRA 130 (1989).

36. *Id.* at 146-47 (citing JOSÉ C. CAMPOS, MARIA CLARA LOPEZ- CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES 12 (1981); Gates v. Megargel, 266 F. 811, 816-817 (2d Cir. 1920) (U.S.); Blackner v. McDermott, 176 F.2d 498, 500 (10th Cir. 1949) (U.S.); Carboneau v. Peterson, 95 P.2d 1043 (1939) (U.S.); Buckley v. Chadwick, 45 Cal. 2d 183 (1955) (U.S.); Tufts v. Mann. 116 Cal. App. 170 (1931) (U.S.); Harmon v. Martin, 71 N.E.2d 74 (1947) (U.S.); CIVIL CODE, art. 1783; & Tuazon v. Bolaños, 95 Phil. 106, 109 (1954)) (emphasis supplied).

37. *See, e.g.*, Securities and Exchange Commission, SEC Opinion (Jan. 26, 1961); Securities and Exchange Commission, SEC Opinion (Nov. 11, 1981); & Securities and Exchange Commission, SEC Opinion (Apr. 29, 1985).

The Supreme Court in *Aurbach*, however, identified the possible source of legal confusion from the fact that the Civil Code seems to capture a joint venture arrangement within the ambit of the statutory definition of partnership.[38]

Complementarily, in another 1989 case, that of *Pioneer Insurance & Surety Corp. v. Court of Appeals*,[39] the Supreme Court, upholding the Court of Appeals, intimated that premium should be placed on the intent of the parties as a guide to whether or not a juridical entity, including partnerships, should be deemed established as a matter of agreement or contract —

> While it has been held that[,] as between themselves[,] the rights of the stockholders in a defectively incorporated association should be governed by the supposed charter and the laws of the [S]tate relating thereto and not by the rules governing partners ... , it is ordinarily held that persons who attempt, but fail, to form a corporation and who carry on business under the corporate name occupy a position of partners inter se ... . Thus, where persons associate themselves together under articles to purchase property to carry on a business, and their organization is so defective as to come short of creating a corporation within the statute, they become in legal effect partners inter se, and their rights as members of the company to the property acquired by the company will be recognized ... . So, where certain persons associated themselves as a corporation for the development of land for irrigation purposes, and each conveyed land to the corporation, and two of them contracted to pay a third the difference in the proportionate value of the land conveyed by him, and no stock was ever issued in the corporation, it was treated as a trustee for the associates in an action between them for an accounting, and its capital stock was treated as partnership assets, sold, and the proceeds distributed among them in proportion to the value of the property contributed by each ... . *However, such a relation does not necessarily exist, for ordinarily persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist ... , and it should be implied only when necessary to do justice between the parties; thus, one who takes no part except to subscribe for stock in a proposed corporation which is never legally formed does not become a partner with other subscribers who engage in business under the name of the pretended corporation, so as to be liable as such in an action for settlement of the alleged partnership and contribution* ... . A partnership relation between certain stockholders and other stockholders, who were also directors, will not be implied in the absence of an agreement, so as to make

38. *Aurbach*, 180 SCRA at 147.

39. Pioneer Insurance & Surety Corp. v. Court of Appeals, 175 SCRA 668 (1989).

> the former liable to contribute for payment of debts illegally contracted by the latter ... .[40]

Thus, on the basis of the foregoing jurisprudential pronouncements, there is basis to assert that, where corporations enter into joint venture arrangements with no intent to establish a juridical entity, no Civil Code partnership should be deemed formed as a result of their contract.

However, notwithstanding the foregoing, there evidently continued to exist a jurisprudential tendency to *automatically* equate a joint venture agreement with a partnership and *ipso facto* apply to the resulting contractual relations between the joint venture partners, the Civil Code provisions on partnership. This is illustrated by the 2011 case of *Realubit v. Spouses Jaso*[41] wherein the Court categorically ruled in this wise —

> Generally understood to mean an organization formed for some temporary purpose, a joint venture is likened to a particular partnership or one which 'has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation.' The rule is settled that joint ventures are governed by the law on partnerships which are, in turn, based on mutual agency or *delectus personae*.[42]

The implications and consequences of *Realubit* — they had described the rule, perhaps hastily, as "settled" — is that a corporation can enter into a joint venture agreement with another natural or juridical person only if the conditions required by the SEC for corporations to enter into partnerships in the first place exist, for that is the only instance, under the pronouncements of the SEC, when a corporation can be a partner in a Philippine partnership. This, in turn, leads to legal confusion and instability in any joint venture agreement involving a corporation as it puts into question the very legal authority of a corporation not possessing the requirements enumerated by the SEC — most basic of which is that its constitutive documents must allow it to enter into partnerships — to do so.

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40. *Pioneer Insurance & Surety Corp.,* 175 SCRA at 682-83 (citing 48 C.J.S. 464 (1986); Cannon v. Brush Electric Co., 96 Md. 446 (1903) (U.S.); Lynch v. Perryman, 29 Okla. 615, (1911) (U.S.); Smith v. Schoodoc Pond Packing Co., 109 Me. 555 (1912) (U.S.); Whipple v. Parker, 29 Mich. 369 (1874) (U.S.); Shorb v. Beaudry, 56 Cal. 446, 451 (1880) (U.S.); London Assurance Co. v. Drennen, 116 U.S. 461, 472 (1886). (U.S.); Ward v. Brigham, 127 Mass. 24 (1879) (U.S.); & Heald v. Owen, 44 N.W. 210 (1890) (U.S.)) (emphasis supplied).

41. Realubit v. Spouses Jaso, 658 SCRA 146 (2011).

42. *Id.* at 155.

While it is submitted that, among the cases cited above, the better rule is that set forth in the earlier *Aurbach* and *Pioneer Insurance* decisions — to be sure, there have been a plethora of joint venture agreements by and among corporations as a matter of corporate practice reality — this legal conundrum may be considered settled, moot even, in the sense that under the amendment in Section 35 (h) of the Revised Corporation Code, there is no longer any doubt on, nor peculiar conditions, to the ability of a corporation to enter into partnerships. Consequently, there is no longer any legal doubt whatsoever on the ability of corporations to enter into joint venture agreements.

V. THE STABILITY OF A STATUTE

While the SEC had exhibited an openness to permit partnerships of corporations as confirmed in the Opinions they issued, such Opinions merely constituted administrative determinations or executive constructions.

It is legal truism that administrative determinations are not necessarily binding on courts even as they are accorded respect considering that the same were given by the administrative body tasked with enforcing the law subject of its interpretative issuance.[43] The express statutory recognition of the ability of corporations to become partners in a partnership has, by Section 35 (h), been recognized as an inherent power of corporations and is a matter that is now binding on courts.

Given that the power to enter into partnerships is now an expressed inherent power of *all* corporations, the condition imposed by the SEC in the past, i.e. that before corporations could become partners in a Philippine partnership, they should specify that power in its Articles of Incorporation, should no longer apply. In addition, it has become indubitable that corporations may become either general or limited partners as the law does not make any distinction.

VI. STRUCTURING OPPORTUNITIES

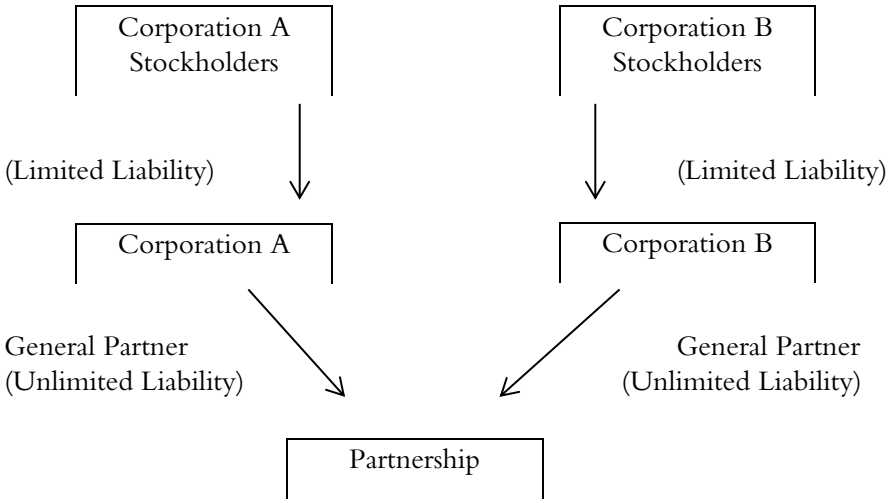
Corporations as partners in a Philippine partnership provide opportunities for creative structures to be adopted to address specific requirements of the parties involved.

One of the common concerns about utilizing the partnership form for business undertakings was the legal requirement that the general partners of a

43. Ramos v. Court of Industrial Relations, 21 SCRA 1282, 1291 (1967).

partnership possess unlimited liability for the obligations of the partnership.[44] The adoption of a limited partnership structure did not itself guarantee a complete relief from this exposure considering that limited partnerships require that there must be at least one general partner.[45]

The combination of the limited liability nature of corporate entities with a partnership structure may effectively address such a concern. Consider the following straightforward structure of a general partnership of corporations:



Under the structure illustrated above, as a matter of Philippine law, each of Corporation A and Corporation B, being general partners, has unlimited liability for the obligations of the partnership. When a partnership liability is imposed against the general partners in this case, however, while the corporate entities will have to answer for such liabilities, the respective stockholders of Corporation A and Corporation B will only be personally liable for such liabilities *to the extent of their unpaid subscriptions to their respective corporations*. This is because the separate juridical personality of corporations will continue to apply subject, of course, to available legal grounds to fuse the personalities of the corporation and its stockholders.

Effectively, the stockholders are able to utilize a layer of a corporate entity to conduct their business through a partnership vehicle, take part in the management of the partnership, and, at the same time, enjoy *limited* liability.

44. CIVIL CODE, art. 1816.

45. *Id.* art. 1843.

Would the good faith adoption of the foregoing structure give cause for piercing the veil of corporate fiction between the stockholders and their corporations? It is submitted that the mere arm's length utilization of available legal structuring options would not, by that very fact, provide a basis for corporate veil piercing.[46]

There are other potential benefits in utilizing the partnership form in commerce and business and one of these may be in the area of greater flexibility in the distribution of profits to the partners.

In the Revised Corporation Code, dividends may be distributed to stockholders only if the corporation has unrestricted retained earnings.[47] Moreover, a corporation is not permitted, as a general rule, to retain surplus profits in excess of 100% of its paid in capital.[48]

The Civil Code does not provide for similar restrictions on partnerships. Thus, the partners may decide to distribute profits to their partners at any time

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46. The doctrine of piercing the veil of corporate fiction is defined as

> a legal precept that allows a corporation's separate personality to be disregarded under certain circumstances, so that a corporation and its stockholders or members, or a corporation and another related corporation could be treated as a single entity. The doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes.

Veterans Federation of the Philippines v. Montenejo, 847 SCRA 1, 26 (2017) (citing Livesey v. Binswanger Philippines, Inc., 719 SCRA 433, 448-49 (2014).

47. REV. CORP. CODE, § 42.

48. *Id.* The retention of surplus profits in excess of 100% of a corporation's paid in capital, however, is justified in the following circumstances:

> (a) when justified by definite corporate expansion projects or programs approved by the board of directors; [ ]
> (b) when the corporation is prohibited under any loan agreement with financial institutions or creditors, whether local or foreign, from declaring dividends without their consent, and such consent has not yet been secured; or [ ]
> (c) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is need for special reserve for probable contingencies.

Id.

for so long as insolvency does not result.[49] It would appear, then, that the matter of distribution of profits is more elastic when the income-generating business entity is a partnership rather than a corporation.

Governance may also have less rigid standards in the management of partnerships as opposed to corporations which impose upon directors stringent requirements affecting their election, removal, qualifications, and even compensation.[50]

VII. THE GOVERNING LAW

Philippine partnerships are subject to the provisions of Book IV, Title IX of the Civil Code and, when corporations are partners in a partnership, the Revised Corporation Code is likewise relevant. However, in respect of the partnership itself, since it is a separate juridical entity,[51] it is the Civil Code that will apply directly to it.

A perusal of the law on partnerships in the Civil Code raises the question as to whether or not it was intended to apply to commercial partnerships of corporations in addition to partnerships among natural persons. For instance, the replete references to the terms *death* and *civil interdiction* in relation to a partnership's partners are terms applicable to natural persons and not to juridical entities.

Moreover, certain principles traditionally considered as part of the intrinsic nature of partnerships — which are subjects of the Civil Code, such as *delectus personae* — are arguably challenged when partnerships have corporations as partners. The contrasting *impersonal* qualities of corporations become mingled with those of the Civil Code partnerships which have been understood to be always based on mutual *personal* trust. [52]

VIII. THE ORIGINS OF THE CIVIL CODE PROVISIONS ON PARTNERSHIPS

49. CIVIL CODE, art. 1856.

50. *See* REV. CORP. CODE, tit. III.

51. CIVIL CODE, art. 1768.

52. JG Summit Holdings v. Court of Appeals, 412 SCRA 10, 30 (2003). In this case it was held that "[t]he joint venture between the Philippine Government and KAWASAKI is in the nature of a partnership which, unlike an ordinary corporation, is based on *delectus personae*. No one can become a member of the partnership association without the consent of all the other associates." *Id.* (emphasis supplied).

An examination of the history of the Philippine law on partnerships currently contained in the Civil Code seems to explain the bases for such an uneasiness.

Under Ancient Roman Law, partnerships — as a form of legally-sanctioned associations — were already in existence, and early mercantile courts recognized two forms of partnerships: (1) *Societas* or general partnerships and (2) *Commenda* or *Societe en Commandite* or limited partnerships.[53] Such partnerships had, among other things, the following features:

(1) There was no limit as the number of partners;

(2) A partner was not considered the implied agent of the others. Thus, to bind others, a partner had to obtain an express mandate (*mandatum* or authorization) from each of the others;

(3) The partners were liable *jointly*, not solidarily;

(4) The partners had the right to the *beneficum compententiae*, that is, they were held financially liable only insofar as they would not be reduced to destitution;

(5) The heirs (*heres*) of a deceased partner could not succeed to the rights of the deceased, even by express stipulation; and

(6) A Roman partner could not retire in order to enjoy alone a gain which he knew was awaiting him.[54]

Under the Spanish Civil Code of 1889,[55] two types of partnerships were allowed in the Philippines: (1) civil or non-commercial partnership[56] and (2) mercantile or commercial partnership.[57] The distinction between the two depended on "the object to which [the partnership was] devoted[.]"[58]

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53. JUSTO P. TORRES, JR., THE LAW ON BUSINESS ORGANIZATION 3 (2008 ed.) (citing William Mitchell, *Early Forms of Partnership*, *in* SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 183 (1909)).

54. EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED, 578-79 (17th ed. 2013) (emphasis supplied).

55. Código Civil [C. CIVIL] (1889) (repealed 1950).

56. *Id.* art. 1665.

57. Code of Commerce [CODE OF COMMERCE], art. 116 (1888).

58. Prautch, etc. v. Hernandez, 1 Phil. 705, 707 (1903).

The fundamental distinction between the two classes of partnerships was that a civil partnership had for its interest civil purposes,[59] while partnerships which had for their object an operation of commerce were mercantile.[60] In other words, this latter type of partnership was geared toward the pursuit of mercantile transactions.[61]

The present Civil Code repealed the provisions of the Spanish Civil Code of 1889 with regard to civil partnerships[62] and the provisions of the Code of Commerce dealing with mercantile partnerships.[63] Consequently, the distinction between a civil partnership and a mercantile partnership has fallen into obsoletion. The Code Commission attributed to the following the current law on partnerships:

(1) Title VIII of the Spanish Civil Code of 1889;

(2) Provisions of the Code of Commerce ([Articles] 1789 & 1808);

(3) Uniform Partnership Act ([Articles] 1769, 1774, 1785, 1787, 1805-1907, 1809, 1810-1814, and 1819-1826);

(4) Uniform Limited Partnership Act;

(5) Opinions of noted commentators and jurists ([Articles] 1789 and 1791); and

(6) The Code Commission itself ([Articles] 1768, 1770 (2), 1772, 1790, and 1815).[64]

In the US, the Uniform Partnership Act and the Uniform Limited Partnership Act were attempts at achieving consistency among state laws on the subject of partnerships.[65] In adopting the provisions of these Acts, the Code Commission reasoned that "there [were] numerous gaps in our present

59. PARAS, *supra* note 54, at 579.

60. CODE OF COMMERCE, art. 264.

61. *Prautch*, 1 Phil. at 707.

62. CIVIL CODE, art. 2270 (1).

63. *Id.* art. 2270 (2).

64. EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW 1 (1st ed. 1970) (citing *Report of the Code Commission*, 300 LAWYER'S J. 15).

65. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., COMMENTS AND CASES ON PARTNERSHIP, AGENCY, AND TRUSTS 4 (5th ed. 1999).

law on these two subjects. Moreover, these American statutes are more in keeping with modern business practices."[66]

In an apparent lament over the consequence of the mishmash that had occurred in the drafting of the Civil Code's partnership law provisions, Justice Eduardo P. Caguioa observed that

> Mr. Justice J.B.L. Reyes criticizes the method by which the provisions of the Uniform Partnership Act were engrafted into the new Civil Code. He says that the Code Commission copied the provisions of that Act verbatim without causing to harmonize the same with the retained provisions of the Code of 1889 and apparently *without noticing* the fundamental differences in the [c]ivil and [c]ommon [l]aw conceptions of this institution. The result is that the articles of the new Code on [p]artnership vary in assumptions and in philosophy.[67]

Apparently, due to the law on partnership being a composite of various sources, whether of civil law or of common law origin, there arose several distinctions between the Civil Code concept of partnership and its Anglo-American counterpart.[68]

A review of the history and the language of the present law on partnerships, thus, provides compelling explanations and reasons for the awkwardness that seemingly results when the Civil Code's provisions on partnerships is made to unqualifiedly apply to commercial partnerships of corporations.

IX. CONCLUSION

That the ability of corporations to enter into partnerships as general and limited partners is now statutorily recognized as among their inherent powers lends much needed stability to this form of partnership including joint venture agreements among corporates for that matter. It is certainly not irrational to

66. *Id.* at 6 (citing CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES 67 (1951)).

67. CAGUIOA, *supra* note 64, at 2 (citing *Observations on the new Civil Code*, XVI L.J. 95 (1950)) (emphasis supplied).

68. *See* DE LEON & DE LEON, JR., *supra* note 65, at 15-16.

believe that corporations may discover peculiar benefits to them of adopting the partnership form for advancing their commercial interests.

To enable the more effective and efficient utilization of this form of business ownership structure, however, it is appropriate that Congress consider the enactment of an entirely new law on commercial partnerships which takes into account the possibility of corporate entities as partners and addressing specific nuances.