

# RFBT QUICKNOTES – CLEAN TTS COPY, PART 2

Data Privacy Act • Intellectual Property Law • Ease of Doing Business Act • E-Commerce Act • Financial Rehabilitation and Insolvency Act • Law on Cooperatives • SEC and Securities Regulation Code

## 1. DATA PRIVACY ACT

### Scope and Persons Covered

The Data Privacy Act covers the processing of all types of personal information. A Personal Information Controller, or PIC, is one who controls the collection, holding, processing, or use of personal information. It does not include agents and persons performing the same actions in personal or household affairs. A Personal Information Processor, or PIP, controls, collects, holds, processes, uses, transfers, or discloses personal information as instructed by the PIC.

A transaction between a PIC and another PIC involving personal information is data sharing. A transaction between a PIC and a PIP involving personal information is subcontracting or outsourcing. The notes state that a Data Sharing Agreement is required to be reviewed and approved by the National Privacy Commission, while an outsourcing agreement is not required to be reviewed and approved by the Commission.

### Processing Principles

Processing of personal information is subject to compliance with the Data Privacy Act and related disclosure laws, and to the General Data Privacy Principles. These include the Legitimate Purpose Principle, meaning the purpose is not contrary to law, morals, or public policy; the Proportionality Principle, meaning the processed data should be adequate and not excessive for the purpose; and the Transparency Principle, meaning the data subject is aware of the nature, purpose, and extent of processing.

### Kinds of Personal Information

Personal information generally refers to information from which an individual's identity is apparent, can reasonably and directly be ascertained by the entity holding it, or which, when combined with other information, would certainly identify the individual. Examples in the notes include name, address, and contact number.

Sensitive personal information includes information about race, ethnicity, marital status, age, color, religious, philosophical or political beliefs, health, education, genetic or sexual life, social security numbers, government-issued identification, and other information classified by law. Examples include passport details, health records, and Social Security System numbers.

Privileged information refers to data that constitutes privileged communication under the Rules of Court and other pertinent laws, such as doctor-patient discussions and lawyer-client communications.

### When Processing Is Allowed

For personal information in general, processing is allowed when the data subject consents; when necessary for a contract or pre-contractual steps; for legal compliance; to protect vital interests including life and health; for national emergency response, public order, safety, or public authority functions; or for legitimate interests unless overridden by the data subject's fundamental rights and freedoms.

For sensitive personal information, processing is generally not allowed except in the situations listed in the notes, including specific consent of the data subject or all parties involved; when mandated by law with data-protection safeguards; protection of life and health when consent cannot be obtained; lawful non-commercial objectives of public organizations involving bona fide members with prior consent; medical treatment with adequate protection; and legal proceedings, protection of lawful rights and interests, or disclosure to government or public authorities.

### Security, Breach Notification, and Accountability

The PIC must implement reasonable and appropriate measures to protect personal information. Measures include safeguards for computer networks, security policies, preventive action against breaches, regular monitoring, ensuring involved parties implement safeguards, and notifying the National Privacy Commission and data subjects in case of breach within seventy-two hours.

Delay in breach notification is generally allowed only to the extent necessary to determine the scope of the breach, prevent further disclosure, or restore reasonable integrity to the information and system. The notes state that if a breach involves at least one hundred data subjects, there is no delay.

The PIC shall designate a Data Protection Officer accountable for organizational compliance. The PIC remains responsible for personal information under its custody and compliance with the Data Privacy Act.

### **Sensitive Personal Information in Government**

Heads of agencies must secure sensitive personal information maintained by government using, as far as practicable, the most appropriate ICT-industry standard recognized and recommended by the National Privacy Commission. On-site and online access by employees requires security clearance from the agency head. Off-site access requires agency-head approval. The request must be acted upon within two business days; otherwise, it is deemed disapproved. Approved access is limited to one thousand records at a time, and data must be encrypted using the most secure standard recognized by the Commission.

### **Rights of the Data Subject**

The rights listed are: right to informed consent, right to object, right to withhold consent, right to access, right to correction, right to erasure, right to damages, and right to data portability.

These rights may be exercised by lawful heirs or assigns after the data subject's death or incapacity. The notes state that the rights do not apply when personal information is used solely for scientific or statistical research without affecting decisions concerning the data subject, or when processed for criminal, administrative, or tax investigations.

### **Registration and the National Privacy Commission**

General rule in the notes: a PIC or PIP employing at least two hundred fifty persons is required to register; one employing fewer than two hundred fifty is generally not required. Registration is nevertheless required regardless of number of employees when processing is likely to pose a risk to data-subject rights and freedoms, is not occasional, or includes sensitive personal information of at least one thousand individuals.

The National Privacy Commission administers and implements the Data Privacy Act and monitors compliance with international data-protection standards. Its organizational structure in the notes shows the Privacy Commissioner and two Deputy Privacy Commissioners. Commissioners are appointed by the President for a three-year term and may be reappointed for another term. Qualifications include being at least thirty-five years old, of good moral character, and a recognized expert in information technology and data privacy.

### **Penal Provisions**

The notes list penalties for unauthorized processing, unauthorized provision of access, improper disposal, processing for unauthorized purposes, unauthorized access or intentional breach, concealment of security breaches, malicious disclosure, unauthorized disclosure, and a combination or series of acts. Penalties vary depending on whether personal information or sensitive personal information is involved.

## **2. INTELLECTUAL PROPERTY LAW**

### **Trademark**

A mark is any visible sign capable of distinguishing the goods or services of an enterprise. A trademark identifies goods, while a service mark identifies services. A trade name is any visible sign capable of distinguishing a business or enterprise and, unlike a mark, need not be registered. A collective mark is a mark or trade name used by members of a cooperative, association, or other collective organization.

The spectrum of distinctiveness runs from fanciful, arbitrary, suggestive, descriptive, to generic. Fanciful, arbitrary, and suggestive marks are registrable. Descriptive marks are generally not registrable, subject to the Doctrine of Secondary Meaning. Generic terms are not registrable.

Trademark rights are acquired upon issuance of the Certificate of Registration. Distinctiveness is the requisite. Duration is ten years and renewable. A Declaration of Actual Use must be filed; otherwise, registration may be cancelled. The notes indicate filing periods of three years from filing, one year from the fifth anniversary, and one year from the date of renewal.

General rule: First-to-File Rule. Exception: priority claims for an application abroad. The notes state that the claim must be filed within six months from the original filing date, with a certified copy of the priority application within three months from the secondary filing.

Under the Doctrine of Secondary Meaning, a descriptive mark may gain trademark protection when it develops distinctiveness associated with a particular source through use over time.

### **Trademark Infringement and Unfair Competition**

Trademark infringement includes use in commerce of a mark identical or similar to a registered mark, or reproduction, copying, or imitation on labels, packaging, or advertising, without the owner's consent, in a manner likely to confuse, mislead, or deceive consumers. It applies whether or not an actual sale occurs.

Tests for infringement are the Holistic Test, which considers the mark in its entirety, and the Dominancy Test, which focuses on the prevalent or dominant features.

Unfair competition involves passing off one's goods as those of another with the effect of deceiving the public. Unlike trademark infringement, registration is not necessary to hold someone liable. Remedies listed are recovery of damages, injunction, and destruction of infringing materials. The notes state a penalty of imprisonment for two to five years and a fine of fifty thousand to two hundred thousand pesos.

Examples of non-registrable marks in the notes include generic marks, merely descriptive marks, deceptive marks, scandalous or immoral marks, flags and protected symbols, names or portraits without required consent, identical or confusingly similar marks, conflicts with well-known marks, marks contrary to public order or morality, and misleading geographical indications.

### **Copyright**

Copyright is a right over literary and artistic works that are original intellectual creations. The right is acquired upon creation, originality is the requisite, and duration depends on the type of work.

Economic rights allow the creator or copyright holder to benefit financially and include reproduction, distribution, performance, display, and licensing. Moral rights protect personal and reputational interests and include attribution, integrity, and nonpublication.

For literary and artistic works, the economic right lasts for the author's lifetime plus fifty years. For joint authorship, it lasts for the lifetime of the last surviving author plus fifty years. Anonymous or pseudonymous works generally have fifty years from first lawful publication, subject to the rule in the notes when identity is revealed. Applied art has twenty-five years from making. Photographic and audiovisual works have fifty years from publication, or fifty years from making if unpublished. Performances not in recordings have fifty years from the year of performance, and sound recordings have fifty years from the year the recording took place.

Paternity or attribution right is perpetual. The other moral rights identified in the notes are alteration and nonpublication, preservation of integrity, and the right against false attribution, with duration tied to the economic right as shown in the chart.

Ownership depends on the work. The author owns original literary and artistic works. Co-authors own joint works, with separately identifiable parts owned by their respective authors. For employment, the employer owns works made within regular duties, while the employee owns works outside regular duties. For commissioned works, the creator owns copyright while ownership of the work itself belongs to the commissioning person. Publishers own anonymous or pseudonymous works unless the author's identity is evident or revealed.

Copyright infringement is the exercise of exclusive economic rights without the copyright owner's consent. Fair use may apply to criticism, comment, news reporting, teaching, scholarship, research, and similar purposes. The notes warn that fair use may still amount to plagiarism if proper acknowledgment is absent.

Non-copyrightable subject matter includes ideas, procedures, systems, methods of operation, concepts, principles, discoveries, mere data, mere press information, and official legislative, administrative, or legal texts and official translations.

## **Patent**

A patent is a right granted by government to an inventor, designer, or maker to exclude others from using or selling the invention. The criteria for patentability are novelty, inventive step, and industrial applicability. The right is acquired upon application, requires patentability, and lasts twenty years without renewal.

Novelty means the invention is new and does not form part of prior art, subject to the Doctrine of Non-Prejudicial Disclosure. The notes give a twelve-month grace period from certain disclosures. Inventive step means the invention is not obvious to a person skilled in the art. Industrial applicability means it can be produced and used in industry.

Patent ownership belongs to the inventor, heirs, or assigns; jointly to joint inventors; to the person who commissioned a commissioned invention; to the employer when made within regular duties; and to the employee when made outside regular duties.

Rights conferred include preventing others from making, using, selling, or importing the patented product or process without consent; licensing the patent; and assigning or transferring ownership.

Under the Doctrine of Exhaustion, once the patent holder chooses to receive full consideration for the invention, the associated rights are exhausted as described in the notes. Limitations include use after authorized Philippine marketing, private or non-commercial use not harming the owner's economic interests, experimental use, certain pharmaceutical or medical use, temporary or accidental use in foreign vessels or vehicles, prior user rights, and government use for public purpose.

Patent infringement may be literal infringement, tested by exactness and addition, or infringement under the Doctrine of Equivalents, tested through the Function-Means-Result Test. Remedies include civil action, criminal action for repeated infringement, injunction, and destruction of infringing materials. The notes state that civil action prescribes after four years and repeated-infringement criminal action after three years.

### **3. EASE OF DOING BUSINESS ACT**

The objectives are to expedite business and non-business transactions with government and to reduce red tape, graft, and corruption. The law covers government offices and agencies that provide business or non-business services.

#### **Reengineering and Streamlining**

Agencies should submit a list of services including the steps in completing each service or process, transaction costs, number of signatures, and number of documents required. The maximum number of signatures required to complete a process is three. A whole-of-government approach uses inter-agency review for horizontal integration or end-to-end processing. A Regulatory Management System promotes good regulatory governance, while Regulatory Impact Assessment reviews, simplifies, modifies, and modernizes regulations to reduce regulatory burden.

#### **Citizen's Charter and Zero-Contact Policy**

A Citizen's Charter is an official document communicating an agency's service standards in simple terms. Its contents include a uniform checklist of requirements, procedure, responsible persons, maximum processing time, documents to be presented, fees and payment location, and complaint procedure.

Under the Zero-Contact Policy, public officials and employees limit interactions with applicants unless strictly necessary. Examples of strictly necessary interactions in the notes are payment of fees and processing of complex or highly technical transactions.

#### **Access to Government Services**

Responsible officers and employees shall accept written applications or requests, preliminarily assess completeness, and issue an acknowledgment receipt. The receipt should contain a unique identification number, agency seal, responsible officer or employee, unit and designation, and date and time of receipt.

Standard periods in the notes include three working days for simple transactions, seven working days for complex transactions, and for highly technical transactions, whichever is shorter between twenty working days and the period determined by the agency. Certain transactions may be extended once as provided in the notes. Transactions requiring Sanggunian approval and telecommunications-related transactions have separate periods shown in the source.

Automatic approval or automatic renewal or extension may apply when the government agency fails to approve or disapprove within the prescribed processing time, provided required documents and fees have been submitted or paid, as applicable.

Heads of government offices and agencies must ensure that applicants present before the end of official hours are attended to even during lunch breaks and after regular working hours. A denial must be fully explained in writing, identify the person making the denial, and state the ground.

#### **Local Government Units and BOSS**

A Unified Business Application Form is used in processing new applications. It is available online through the Central Business Portal, and hard copies are available at Negosyo Centers and LGU offices. A Business One-Stop Shop promotes ease of doing business and access to services for MSMEs and serves as the city or municipality's business permitting and licensing system.

The notes also discuss Electronic BOSS, electronic versions of licenses, clearances, permits, certifications and authorizations, and technical assistance through joint operational guidelines of DICT, DTI, and DILG.

#### **Fire Code Clearances**

The notes state that the Fire Safety Evaluation Clearance and Fire Safety Inspection Certificate must be issued within seven working days. For renewal of business permits, the Bureau of Fire Protection must present the FSIC or a positive or negative list to the city or municipality within three working days. If the BFP fails to provide the FSIC within three days, the business receives a temporary valid FSIC allowing automatic

permit renewal. Fire incident certification must be issued within twenty working days and may be extended once for another twenty days.

### **ARTA and Penalties**

The Anti-Red Tape Unit is maintained by the Civil Service Commission. The Anti-Red Tape Authority oversees and implements policies to reduce bureaucratic inefficiencies, monitors compliance, initiates investigations and assists in filing cases, recommends regulatory improvements, and ensures public access to regulatory information. The Ease of Doing Business and Anti-Red Tape Advisory Council is the policy and advisory body.

The notes list first-offense suspension of six months. For a second offense, penalties include perpetual disqualification from public office, forfeiture of retirement benefits, imprisonment of one to six years, and a fine of five hundred thousand to two million pesos.

## **4. E-COMMERCE ACT**

### **Definitions and Objectives**

A computer is an electronic, magnetic, optical, or other high-speed data-processing device or system performing logical, arithmetic, and memory functions. An information and communication system generates, sends, receives, stores, or otherwise processes electronic data messages or electronic documents. The originator is the person by whom or on whose behalf an electronic message or document is generated, sent, or received. The addressee is the intended recipient, excluding an intermediary.

An intermediary sends, receives, stores, or provides other services with respect to electronic data on behalf of another. A service provider provides online services or network access, including hosting, caching, and linking, without initiating or modifying the electronic data. An electronic data message is information generated, sent, received, or stored electronically. An electronic signature is a distinctive sign, characteristic, or sound in electronic form representing identity and attached to or logically associated with electronic data. An electronic key is a code or mechanism securing authenticity and integrity. An electronic document is information or its representation stored electronically.

The objectives are to facilitate domestic and international dealings through electronic media, recognize authenticity and reliability of electronic data, and promote universal use of electronic transactions in government and the public. The Act applies to commercial or non-commercial, domestic or international transactions using electronic data.

### **Legal Recognition**

Under the Non-Discrimination Principle, information should not be denied validity and enforceability solely because it is in electronic form. Under the Parity Rule, an electronic document may have the legal effect of another document and may be the functional equivalent of a written document for evidentiary purposes, provided the requirements of integrity, reliability, authentication, completeness, original form, and displayability are met.

The burden of proving authentication rests on the person introducing the electronic data. An electronic signature may be equivalent to a handwritten signature when it identifies the party and indicates consent or approval, is reliable and appropriate, is necessary for the party sought to be bound, and can be verified by the other party.

### **Electronic Contracts and Communication**

An offer, acceptance, and other legally required elements of a contract may be expressed, demonstrated, and proved through electronic data. Electronic data is attributed to the originator when sent by the originator, by a person authorized on the originator's behalf, or by a system programmed by or on behalf of the originator.

General rule: no acknowledgment of receipt is necessary. Exceptions apply when the parties agree to acknowledgment or when the originator requests it.

For dispatch and receipt, the notes identify the originator's place of business as the place of dispatch and the addressee's place of business as the place of receipt, with timing rules depending on entry into or retrieval from designated information systems.

### **Carriage of Goods and Government Transactions**

Electronic records such as bills of lading are valid and enforceable like written documents. Contracts in the carriage of goods may be made electronically. Government departments, bureaus, offices, agencies, and government-owned or controlled corporations are required to accept creation, filing, and retention of electronic data; issue permits and licenses electronically; accept electronic payments and issue receipts; and transact government business through electronic systems.

### **Penal Provisions**

Punishable acts include unauthorized copying through telecommunications networks, hacking or cracking and unauthorized access with corrupt, stealing, or similar intent including introduction of viruses, violations of consumer and related laws through covered transactions, and other violations of the E-Commerce Act. The notes show fines and imprisonment depending on the violation.

## **5. FINANCIAL REHABILITATION AND INSOLVENCY ACT**

### **Scope and Insolvency**

An insolvent debtor may be a juridical person, such as a sole proprietorship, partnership, or corporation, or a natural person. Debtors may be grouped when a sole proprietorship is owned by the same individual, a partnership is more than fifty percent owned by the same person, or corporations are parent, subsidiary, or affiliate entities.

The notes state that FRIA does not apply to banks, insurance companies, pre-need companies, and government agencies or units governed by their respective special laws. Actual insolvency means assets are less than liabilities. Technical insolvency means assets exceed liabilities but liquid assets are insufficient to cover liabilities.

For natural persons, proceedings include suspension of payments and liquidation. For juridical persons, proceedings include rehabilitation and liquidation.

### **Suspension of Payments**

Step one is filing a petition together with a schedule of debts and liabilities, inventory of assets, and proposed agreement with creditors. Step two is issuance of a suspension order. General rule: no creditor shall sue the debtor. Exceptions listed include secured creditors and certain claims for personal labor, maintenance, and expenses of the last illness and funeral of the debtor's wife or children when incurred within sixty days before the petition.

The suspension lasts three months or until creditor disapproval, whichever is earlier. During pendency, the debtor cannot dispose of property or make payments except those relating to the ordinary course of business.

Step three is creditor approval or rejection of the proposed agreement. Quorum is at least three-fifths of liabilities. The voting requirement is a double majority: two-thirds of creditors voting plus three-fifths of total liabilities. Creditors within ninety days before the petition are not entitled to vote, according to the notes.

### **Court-Supervised Rehabilitation**

A petition includes a rehabilitation plan and at least three nominees for rehabilitation receiver. Voluntary rehabilitation is initiated by the debtor upon showing insolvency and viability of rehabilitation. Involuntary rehabilitation may be initiated by a creditor or group of creditors when there is no genuine issue of fact on the claims, debts have been demandable for at least sixty days, and another creditor has initiated foreclosure proceedings, as stated in the notes.

The court issues a Commencement Order, formally recognizing the application, and a Stay Order suspending actions or proceedings against the debtor to preserve assets. The Stay Order applies to secured and unsecured creditors, subject to exceptions. If the debtor is insolvent and rehabilitation is likely to succeed, the court gives due course.

Existing management generally manages the entity, but the court may appoint a management committee or delegate management to the rehabilitation receiver. The rehabilitation receiver facilitates proceedings and prepares and submits the rehabilitation plan.

The rehabilitation receiver must be a Philippine citizen, have resided in the Philippines for the six months preceding nomination, possess requisite knowledge of insolvency and commercial laws, and have no conflict of interest. A management committee may take over when existing management is incapable or untrustworthy. A creditors' committee represents creditor interests and consults with the rehabilitation receiver.

### **Pre-Negotiated and Out-of-Court Rehabilitation**

For pre-negotiated rehabilitation, the plan must be approved and endorsed by creditors holding at least two-thirds of liabilities, including at least fifty percent of total secured claims and at least fifty percent of total unsecured claims. The notes prescribe publication periods for the Commencement Order and the

rehabilitation plan, objection periods, hearing periods, and court action.

For out-of-court rehabilitation, the debtor must agree to informal rehabilitation and creditors must approve. Approval requires at least sixty-seven percent of secured obligations, at least seventy-five percent of unsecured obligations, and at least eighty-five percent of total liabilities, secured or unsecured.

The standstill period may not exceed one hundred twenty days, must be approved by creditors representing more than fifty percent of total liabilities, and notice must be published for two consecutive weeks. The finalized rehabilitation plan is published for three consecutive weeks.

The Cram Down Effect means a court-approved rehabilitation plan binds the debtor and all persons affected by it. The notes state that it applies to court-supervised and pre-negotiated rehabilitation, but not to out-of-court rehabilitation.

## **Liquidation**

For voluntary liquidation, the debtor's debt must be more than five hundred thousand pesos and acts of insolvency need not be proved. For involuntary liquidation, the debt must be at least five hundred thousand pesos and acts of insolvency must be proved.

After the liquidation order, secured creditors who did not waive their rights are subject to a temporary stay order for one hundred eighty days, as stated in the notes. The liquidator submits a liquidation plan within three months from assumption into office, followed by approval and distribution of assets.

The notes also summarize filing thresholds for insolvent juridical persons. Voluntary rehabilitation or liquidation may be initiated by the debtor: sole owner for a sole proprietorship, majority of partners for a partnership, or majority of the Board plus two-thirds of shareholders for a corporation. Involuntary rehabilitation and liquidation use qualifying claim thresholds shown in the source.

During rehabilitation, officers or debtors may be liable for disposing of property outside the ordinary course, approving fraudulent transactions, or concealing or misappropriating debtor property. Liability may reach double the property disposed of or double the transaction involved, whichever is higher.

## **6. LAW ON COOPERATIVES**

### **Definition, Principles, and Registration**

A cooperative is a duly registered autonomous association of persons with a common bond of interest, joined to achieve social, economic, and cultural needs through capital contribution, patronizing products or services, and accepting a share of risks and benefits. It must be established in accordance with cooperative principles.

The cooperative principles listed are voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training, and information; cooperation among cooperatives; and concern for community.

Organization and registration documents include the Articles of Cooperation, by-laws, economic survey, general statement, structure and staffing plan including a bookkeeper, bond for accountable officers, and sworn statement of the treasurer.

The Articles of Cooperation include the cooperative name, which must contain the word Cooperative; purpose; term of existence; area of operation and principal office; names, nationalities, and addresses of registrants; common bond of membership; directors; and capital structure. The term stated in the notes is fifty years, renewable within five years before expiration.

The Cooperative Development Authority acts on the registration. If no action is taken within sixty days, the notes state that it is deemed approved. A denial may be appealed to the Office of the President within ninety days; if no action is taken within ninety days, it is deemed approved. The Certificate of Registration marks acquisition of juridical personality.

### **Types of Cooperatives**

A single-purpose cooperative focuses on one type of service or activity. The notes show minimum paid-up capital of twenty-five percent or fifteen thousand pesos, whichever is higher. A multi-purpose cooperative engages in multiple services or activities and has a minimum paid-up capital requirement based on twenty-five percent, one hundred thousand pesos, or financial-statement requirements as shown in the source. A single-purpose cooperative may transform into a multi-purpose cooperative only after at least two years of operation.

A primary cooperative is composed of fifteen or more natural persons residing or working in the area of operation. Secondary cooperatives are composed of primary cooperatives, and tertiary cooperatives are composed of secondary cooperatives, subject to the capital and membership requirements in the notes.

### **Members and General Assembly**

Regular members comply with all requirements, enjoy all rights and privileges, and compose the General Assembly. Associate members have limited rights and privileges and cannot vote or be voted upon.

Membership may terminate by withdrawal for a valid reason with sixty-day notice to the Board; death or insanity for a primary member, or dissolution or insolvency for a non-primary member; or majority vote of the Board for causes such as non-patronization, continuous failure to comply with obligations, violation of rules and by-laws, or acts prejudicial to the cooperative.

The General Assembly is composed of all members entitled to vote and is the highest policy-making body. It may generally delegate power to a smaller body by a vote of three-fourths of all members, except powers that cannot be delegated, including amendment of the by-laws and Articles of Cooperation, election of Board members, and approval of development plans.

### **Meetings and Board of Directors**

Members' regular meetings are annual, on the date fixed in the by-laws or within ninety days from the end of the fiscal year. General quorum is twenty-five percent, with special rules for cooperative banks and electric cooperatives. Proxy is allowed for members. Directors meet regularly monthly and specially anytime; quorum is majority and proxy is not allowed.

The Board consists of five to fifteen directors elected by the General Assembly for a two-year term. Its powers include strategic planning, direction-setting, and policy formulation. Directors are prohibited from holding conflicting positions or functions, engaging in the same business, and having conflicts of interest.

A vacancy caused by term expiration is filled by the General Assembly. Other vacancies may be filled by the Board when it can still constitute a quorum; the source also states the rule when the Board cannot constitute a quorum.

Officers include the chairperson, vice-chairperson, and others. Committees include Audit, Election, and other committees.

### **Key Issues, Records, and Taxes**

General rule: directors are not entitled to compensation. Exceptions include by-law authorization and reasonable per diem, subject to limitations when the cooperative incurred a loss or the dividend rate is below the inflation rate.

Contracts involving self-dealing directors are generally voidable, but may be valid when the director's presence is not necessary for quorum, the vote is not necessary for approval, and the contract is fair and reasonable. A disloyal director is generally liable for damages equal to double the profit, subject to ratification by three-fourths of members as stated in the notes.

The cooperative maintains accounting records. Records more than five years old are disposed of by complete destruction. Financial and socio-economic performance reports are audited by a CPA, submitted to the CDA, and presented to the General Assembly.

Transactions between members are tax-exempt. Transactions with non-members are generally taxable, subject to exemptions based on reserve and undivided savings shown in the notes. All cooperatives are exempt from local taxes and taxes on transactions with banks and insurance companies, according to the source.

### **Capital, Surplus, Dissolution, and Laboratory Cooperatives**

Sources of capital include members' capital, loans and borrowings, revolving capital, and assistance. No member of a primary cooperative may hold more than ten percent of share capital. Preference shares must be less than twenty-five percent of total share capital. Par value is less than one thousand pesos, as stated in the notes.

Net surplus is allocated to statutory funds: reserve fund, education and training fund, community development fund, and optional fund, subject to percentages in the source. Remaining surplus may be distributed as interest on capital and patronage refund, subject to the normal rate-of-return limitation.

Voluntary dissolution may proceed where no creditors are affected or where creditors are affected, with the required filings and voting. Involuntary dissolution may result from failure to operate, court order, or CDA order. Non-commencement and non-operation periods shown in the notes are two years. A cooperative continues for three years after dissolution for settlement, realization, and winding up.

A laboratory cooperative is organized by minors and affiliated with a guardian cooperative. Its name includes 'Laboratory Cooperative of' followed by the guardian's name. Registration gives juridical personality. Dissolution of the guardian results in revocation of the laboratory cooperative's Certificate of Registration. A member reaching the age of majority may opt to join the guardian cooperative.

## **7. SECURITIES AND EXCHANGE COMMISSION AND SECURITIES REGULATION CODE**

### **Powers of the SEC**

The Securities and Exchange Commission may investigate and prosecute violations of the Revised Corporation Code; cite persons in contempt; exercise visitorial power; enforce standards, guidelines, policies, rules, and regulations; issue opinions clarifying application of laws and rules; impose sanctions; subpoena witnesses and documents; issue cease and desist orders; and examine and inspect corporate records and regulate corporate activities.

The notes list punishable violations under the Revised Corporation Code, including unauthorized use of corporate name, concealment of disqualification, violation of record-maintenance and inspection duties, willfully misleading statements or reports, independent-auditor collusion, obtaining registration through fraud, fraudulent conduct of business, acting as intermediaries for graft and corruption, toleration of graft and corruption, retaliation against whistleblowers, and other violations without specific penalties.

### **Reportorial Requirements under the RCC**

Annual financial statements are audited by a CPA when assets or liabilities exceed six hundred thousand pesos; below that amount, they may be certified under oath by the Treasurer or Chief Financial Officer, as stated in the notes. Annual financial statements are due within one hundred twenty days from the end of the period.

The General Information Sheet is due, for domestic corporations, within thirty days from the annual meeting and, for foreign corporations, within thirty days from the anniversary of SEC license issuance. Other reports have separate periods for election or appointment of directors and officers, non-holding of election, cessation from office, creation of emergency board, voting trust agreements, death of a single stockholder, changes in OPC nominees, and related matters.

Failure to submit reports three consecutive times may result in delinquent status.

### **Securities and Investment Contracts**

Securities are shares, participation, or interests in a corporation evidenced by a certificate or contract. An investment contract exists when a person invests money in a common enterprise with an expectation of profit primarily from the efforts of others.

### **Security Registration Process**

The process begins with filing a sworn registration statement signed by the required executive and accounting officers and corporate secretary, together with required expert consents and selling-shareholder certifications. Filing fees shall not exceed one-tenth of one percent of the aggregate price. Notice of filing is published in two newspapers of general circulation once for two consecutive weeks. The SEC issues an approval or rejection order within forty-five days. A prospectus under oath certifies that requirements are satisfied and statements are correct.

The notes distinguish securities exempt from registration and transactions exempt from registration. Examples include Philippine and certain foreign government securities, bankruptcy certificates, regulated securities, bank securities, judicial and fiduciary sales, pledgee and mortgagee sales, isolated transactions, stock dividends, sales to own stockholders, single-purchaser bond sales, conversions, broker transactions, pre-incorporation subscriptions, exchanges with existing holders, private placements, and sales to qualified buyers.

Private placements in the notes refer to sales to fewer than twenty persons in the Philippines within a year without a public offering. Qualified buyers include institutions such as banks, insurance companies, pension funds, and other SEC-designated buyers.

### **SRC Reportorial Requirements**

The Annual Report, SEC Form 17-A, is due within one hundred five days from the end of the period and includes CPA-certified financial statements and management discussion and analysis. The Quarterly Report, SEC Form 17-Q, is due within forty-five days from the end of the quarter. The Current Report, SEC Form 17-C, is due within five days from occurrence of a material fact or event reasonably expected to affect an investor's economic decision.

Reporting companies are those selling SEC-registered securities. Public companies include those selling securities on an exchange and those meeting the asset and shareholder thresholds stated in the notes.

### **Insider Trading**

The elements shown are purchase or sale by an insider while possessing non-public material information relating to the issuer or securities. Insiders include the issuer corporation, directors or officers, persons controlling the corporation, persons whose relationship with the issuer gives access to non-public material information, and government officers or employees with such access.

Direct insider trading is trading by the insider. Indirect trading is trading by a person who learned the non-public material information from an insider.

### **Mandatory Tender Offer and Fraudulent Transactions**

The Mandatory Tender Offer Rule protects minority shareholders when groups acquire sizable numbers of shares and applies to public companies. A declaration is a public announcement of an intention to acquire shares; a tender offer is an offer to purchase the remaining interest of the corporation. The source chart uses acquisition thresholds of fifteen percent, thirty-five percent, and more than fifty percent, with declaration and tender-offer requirements depending on the threshold and acquisition period.

Other fraudulent transactions listed are wash sales, matched orders, marking the close, painting the tape, squeezing the float, hype and dump, short sale, and boiler-room operations.