NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

SENATE
S. No. 2765

Introduced by Senator Loren B. Legarda

AN ACT
ESTABLISHING THE FRAMEWORK STRATEGY ON SUSTAINABILITY REPORTING COVERING ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) CONSIDERATIONS, INSTITUTIONALIZING ASSURANCE THEREFOR, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

ESG stands for Environmental, Social, and Governance – the three vital factors used in measuring an organization's corporate financial interests. ESG has gained significant traction globally as a framework for evaluating the sustainability and ethical practices of companies and organizations.

The importance of ESG in corporate governance is globally recognized. The Principles for Responsible Investment (PRI) and Sustainable Development Goals (SDGs) of the United Nations (UN) reinforced the importance of ESG for sustainable development. Further, under the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance, well-designed corporate governance policies support the sustainability and resilience of corporations and, in turn, may contribute to the sustainability and resilience of the broader economy.[1]

A sound framework for corporate governance with respect to sustainability matters can help companies recognize and respond to the interests of shareholders and different stakeholders, as well as contribute to their own long-term success. Such

[1] G20/OECD Principles of Corporate Governance accessible at https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413.

a framework should include the disclosure of material sustainability-related information that is reliable, consistent, and comparable. Reporting on sustainability and corporate social responsibility (CSR) initiatives should be fostered. Many countries, including the Philippines, have introduced regulations mandating ESG reporting for companies; and such mandatory reporting pushed businesses to be more transparent about their ESG efforts.

Further, the International Financial Reporting Standards (IFRS) S1 requires an entity to disclose information about its sustainability-related risks and opportunities that is useful to primary users of general purpose financial reports in making decisions on allocating resources to that same entity. The Task Force on Climate-related Financial Disclosures (TCFD) recommends that climate-related financial disclosures be provided in mainstream (i.e., public) annual financial filings. Disclosure in mainstream financial filings is believed to foster shareholder engagement and broader use of climate-related financial disclosures; thus promoting a more informed understanding of climate-related risks and opportunities by investors, among others.[2]

The link between financial statements and sustainability disclosures is important for stakeholders, including investors, regulators, and the general public, as it provides a holistic view of a company's value creation by integrating financial and non-financial information. The integration of reports aims to present a comprehensive view of how the company's financial performance is influenced by its sustainability efforts and vice versa. To encourage connectivity and ensure that information is decision-useful for investors, sustainability-related financial disclosures should be filed at the same time as their Audited Financial Statements.[3]

[2] TCFD Recommendations accessible at https://www.fsb-tcfd.org/recommendations/.

[3] **BC1.** Based on ISSB, a company would need to report sustainability-related financial information at the same time and for the same period as its annual financial statements. This is consistent with sustainability reporting proposals in certain jurisdictions including the EU, *but not in other jurisdictions where sustainability-related information may be published after the financial statements.* Many respondents supported reporting sustainability-related financial information at the same time as the financial statements. This would facilitate greater connectivity between sustainability-related financial information and financial statements, supporting capital allocation decisions.

In the Philippines, ESG principles promote long-term sustainability by guiding ethical business practices, risk management, and boosting investor confidence. Companies that excel in ESG aspects are often perceived as more resilient, responsible, and attractive investment options.

In 2019, the Securities and Exchange Commission (SEC) issued the Sustainability Reporting Guidelines for Publicly Listed Companies through SEC Memorandum Circular No. 4, series of 2019, to promote transparency through sustainability reporting, and assist publicly-listed companies assess and manage their non-financial performance across Economic, Environmental and Social aspects of their organization.

In a country where companies directly contribute to positive societal change particularly on job creation, community development, and environmental preservation, it is imperative that the ESG principles and sustainability reporting be promoted and integrated in the business practices and plans of corporations, among others. This bill seeks to promote and integrate ESG principles into the business practices of corporations by establishing a robust framework and program for sustainability reporting. At no other time in our history has the incorporation of ESG considerations in business operations become more critical than today. In fact, the 2022 World Risk Index Report ranked the Philippines first in the world in terms of risk exposure to natural disasters, including events which are predicted to become more frequent and more severe as climate change worsens. The Philippines' Nationally Determined Contribution even expressly recognizes that the country is "extremely vulnerable to climate-related and geological hazards." To drive the point further, it is expected that children in Southeast Asia will witness increased losses in coastal settlements and infrastructure due to flooding caused by unavoidable sea-level rise.

In view of the foregoing, the passage of this bill is earnestly sought.

LOREN LEGARDA

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I
GENERAL PROVISIONS

Section 1. *Short Title.* — This Act shall be known as the "ESG Reporting Act."

Sec. 2. *Declaration of Policy.* — It is the declared policy of the State to: (i) promote sustainability reporting in the corporate sector; (ii) guide companies in assessing, measuring, monitoring, reporting on, and disclosing non-financial and financial aspects of their ESG initiatives and programs; (iii) align with globally-recognized standards on the integration and connection of sustainability and financial information to address the needs of the primary users of such information; and (iv) assist companies in achieving the universal targets of sustainability, aligned with the United Nations Sustainable Development Goals, as well as with national policies and programs, such as Ambisyon Natin 2040.

Sec. 3. *Definition of Terms.* — For the purposes of this Act:

a) *Assurance* refers to the act or process where an independent provider aims to obtain sufficient appropriate evidence in order to express a conclusion as to the basis of an opinion, designed to enhance the degree of confidence of the intended users (i.e., investors, lenders, and the general public) about the sustainability and financial information of the reporting entity's sustainability reports and financial statements. This may either be:

(i) *Reasonable Assurance* refers to a high but not an absolute form of assurance in which the assurance provider reduces engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the conclusion of the assurance provider. The conclusion is expressed in a form that conveys the opinion on the outcome of the measurement or evaluation, including presentation and disclosure, of the sustainability matters against the applicable criteria; or

(ii) *Limited Assurance* refers to an assurance in which the assurance provider reduces engagement risk to a level that is acceptable in the circumstances of the engagement but where that risk is greater than a reasonable assurance as to the basis for expressing a conclusion, in a form that conveys whether, based on the procedures performed and evidence obtained, a matter has come to the assurance provider's attention to cause them to believe the sustainability information is materially misstated. The nature, timing, and extent of procedures performed in a limited assurance engagement is limited compared with that necessary in a reasonable assurance engagement; but is planned to obtain a level of assurance that is, in their professional judgment, meaningful. To be meaningful, the level of assurance obtained by the assurance provider is likely to enhance the intended users' confidence about the sustainability information to a degree that is clearly more than inconsequential.

b) *Assurance Provider* refers to the firm, partner or other individual appointed by the firm, who is responsible for the assurance report and who, where required, has the appropriate authority from a professional, legal or regulatory body. An assurance provider must be independent of the reporting entity.

c) *Corporation* refers to an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.

d) *Environmental, Social and Governance (ESG) Reporting or Sustainability Reporting* refers to an organization's practice of reporting publicly on its material economic, environmental and/or social impacts, in accordance with globally accepted standards as adopted by the Securities and Exchange Commission.

e) *Error* refers to the effects of mathematical or clerical mistakes, mistakes in applying the definitions for metrics or targets, oversight or misinterpretations of facts, or unintentional misapplication of policies.

f) *Financial regulators* refer to the Securities and Exchange Commission (SEC), Bangko Sentral ng Pilipinas (BSP), and the Insurance Commission (IC).

g) *Firm* refers to a form of partnership of professional accountants registered with the SEC for the purpose of engaging primarily in the general practice of public accounting

h) *Fraud* refers to an intentional act by one or more individuals, whether from among management, those charged with governance, employees or third parties, involving the use of deception to obtain an unjust or illegal advantage that results in a misrepresentation of sustainability and financial information in the sustainability reports and financial statements.

i) *Independent Assurance Report* refers to a report used as a means by which the assurance providers communicate the outcome of the assurance engagement to the intended users (i.e., investors, lenders, and the general public). It contains a clear expression of the independent assurance provider's reasonable assurance opinion or limited assurance conclusion about the sustainability and financial information.

j) *Material Information* refers to information that reflects the organization's significant economic, environmental, and social impacts that substantively influence the assessments and decisions of stakeholders, including investors. These are matters that substantively affect the organization's ability to create value over the short, medium, and long term. Information is material if omitting, misstating or obscuring that information could reasonably be expected to influence the decisions that primary users of general-purpose financial reports make on the basis of those reports, which include financial statements and sustainability-related financial disclosures and which provide information about a specific reporting entity.

k) *Misstatement* refers to the difference between the disclosures and the appropriate measurement or evaluation of the sustainability matters in accordance with the applicable criteria. Misstatements can arise from error or fraud, may be qualitative or quantitative, and include omitted information or information that obscures the presentation of the disclosures.

l) *Partner* refers to any individual with authority to bind the firm with respect to the performance of a professional services engagement. A partner shall be a Certified Public Accountant (CPA) in public practice, supported by climate or sustainability experts, and, when necessary, such other types of subject matter experts.

m) *Professional competence and due care* refer to the fundamental principle that applies to professionals. A professional is required to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and act diligently and in accordance with applicable technical and professional standards.

n) *Reporting entity* refers to an entity that is required to prepare general-purpose financial reports.

o) *Sustainability Reporting (SR) frameworks* refer to the internationally recognized sustainability-related and financial reporting frameworks, which may consist of a set of sustainability-related principles, standards, and pronouncements for the preparation and submission of reports. These include, but are not limited to, International Financial Reporting Standards (IFRS) on disclosures for sustainability-related financial information, Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), Carbon Disclosure Project (CDP), and recommendations of the Taskforce on Nature-related Financial Disclosures (TNFD) and the Task Force on Climate-related Financial Disclosures (TCFD).

Sec. 4. *Scope and Covered Entities.* — This Act shall cover all corporations, both stock or non-stock, registered with the SEC.

The scope of this Act notwithstanding, the Governance Commission for Government-Owned or -Controlled Corporations (GCG) shall not be precluded from establishing an appropriate sustainability reporting framework for government-owned or -controlled corporations (GOCCs).

CHAPTER II
SUSTAINABILITY REPORTING FRAMEWORK AND REPORTS

Sec. 5. *Sustainability Report.* — In addition to their Annual Report, audited financial statements, and other reports submitted to the SEC, all corporations—both stock and non-stock—are mandated to submit their Sustainability Report to the SEC in accordance with the implementation guidelines or directives set forth by the SEC. The provided Sustainability Report must be accessible to the public upon request and can be viewed during reasonable business hours on business days.

The Sustainability Report shall include both financial and non-financial disclosures. When certain information about sustainability matters affects the company's financial position, financial operations and cash flows, such information shall be consistent with the disclosures in the financial statements.

For this purpose, the SEC, in consultation with relevant government agencies, shall issue guidelines on the phases of implementation of mandatory reporting on corporations, while ensuring reasonable transition and structural reliefs.

Sec. 6. *Integration and Connection of Sustainability Reports and Financial Statements.* – The connection between the sustainability reports and financial statements is important for stakeholders to provide a holistic view of the company's value creation through the integration of financial and non-financial information. The issuance of sustainability reports shall be authorized by the corporation's board of directors/trustees, in the same manner the issuance of audited financial statements is authorized. Sustainability reports should be filed at the same time and for the same reporting period as their audited financial statements.

Sec 7. *Collection and Disclosure Requirements in Annual Report.* – The SEC shall act as the data collector and repository of ESG data submitted by corporations.

Sec. 8. *Recognition of International Reporting Frameworks and Standards.* – The SEC shall have the authority to adopt internationally recognized standards as reporting frameworks and prescribe the most appropriate requirements that shall form part of the applicable reporting framework of the covered entities. In adopting a reporting framework, the SEC shall take into consideration the pronouncements and interpretations of the Philippine Financial and Sustainability Reporting Standards Council and the financial regulators. At all times, the adoption of a reporting framework shall incorporate the principles of proportionality and structural reliefs to avoid any unnecessary administrative burden to the reporting corporation.

Sec. 9. *ESG Code of Conduct.* - The SEC shall formulate a voluntary code of conduct for ESG ratings and data product providers (ESG Code of Conduct). For this purpose, the SEC may consider the adoption of an internationally recognized, interoperable, and proportionate ESG Code of Conduct. The SEC shall likewise issue the relevant guidelines, and exercise such necessary and reasonable powers, for the effective enforcement of this ESG Code of Conduct.

CHAPTER III
ASSURANCE

Sec. 10. *Independent Assurance Reports.* – To establish transparency, credibility and reliability of disclosed sustainability and financial information, the sustainability reports and financial statements filed and submitted to the SEC and other relevant agencies shall be covered by an Independent Assurance Report from a duly registered assurance provider. The Independent Assurance Report may be a Reasonable or Limited Assurance as defined in this Act. Climate-related disclosures in the sustainability report shall be subject to Reasonable Assurance or Limited Assurance, while other sustainability disclosures outside of those climate-related shall be subject to Limited Assurance, or as needed to be determined by the SEC.

The SEC, in consultation with relevant government agencies, shall issue guidelines on the phased implementation of the Independent Assurance Report requirements.

Sec. 11. *Assurance Providers.* – All assurance providers engaged to provide assurance services over sustainability reports and financial statements of the covered entities shall be registered with the SEC. All SEC-registered corporations shall engage assurance providers of sustainability reports and financial statements duly registered with the SEC.

For this purpose, the SEC shall prescribe the qualifications, requirements and procedure for registration as an assurance provider of sustainability reports and financial statements within the coverage of this Act. Subject matter competency, industry knowledge, and levels of training shall be required for all assurance providers.

Further, the SEC shall exercise such adequate level of oversight on the assurance providers for sustainability reports and financial statements through, among others, inspection programs, supervision of activities, monitoring, enforcement of compliance, and imposition of sanctions over registered assurance providers.

Sec. 12. *Professional Standards for Assurance Providers.* – The SEC shall adopt and prescribe internationally recognized professional standards for sustainability assurance engagements, including ethical and independence requirements, internal controls, and quality management systems. For this purpose, the SEC may consult relevant stakeholders, including standard-setters, financial regulators, and other government agencies.

Sec. 13. *Independence and Ethical Requirements.* - All registered assurance service providers shall fully meet the requirements of independence and ethical requirements as provided for in the Code of Ethics for Professional Accountants in the Philippines and this Act.

CHAPTER IV
POWERS AND FUNCTIONS OF SEC

Sec. 14. *Powers and Functions of the Sec.* – The SEC, as the lead agency, shall have original and primary jurisdiction in the enforcement and implementation of the provisions of this Act, and its implementing rules and regulations. In addition to the express powers granted under this Act, the Revised Corporation Code (RCC), Securities Regulation Code (SRC), and other relevant laws, the SEC shall also exercise the following powers and functions:

(a) Issue such other rules, policies and guidance on sustainability reporting to ensure compliance with international standards and global best practices;

(b) Monitor compliance of the covered entities with the provisions of this Act and its Implementing Rules and Regulations, and such other SEC rules on sustainability reporting;

(c) Exercise supervisory and oversight functions over assurance providers of sustainability reports and financial statements;

(d) As may be necessary, create an appropriate unit or office within its control to regulate and supervise the implementation of the provisions of this Act;

(e) Enlist the aid and support of any and all agencies of the Government, as well as private institutions, corporations, entities or associations, in the issuance of rules and regulations and for proper implementation of its powers and functions;

(f) Provide and facilitate continuous capacity-building initiatives on sustainability reporting;

(g) Conduct administrative proceedings, impose sanctions, fines or penalties for any non-compliance with or violation of this Act and its IRR; and

(h) Perform such other functions as may be necessary to carry out the objectives of this Act.

Sec. 15. *Appropriation.* – The funding requirements for the implementation of this Act shall be charged against the operating budget of the SEC. In this regard, the SEC shall be authorized to collect, retain and use the fees, fines, and other charges collected pursuant to this Act and its IRR. The amount collected shall be deposited and maintained in a separate account, which shall form a fund to be utilized exclusively for the implementation of this Act, including the promotion of sustainability reporting. The funding requirements of other government agencies shall be charged against their respective budgets.

Sec 16. *Incentives.* – The SEC and other concerned government agencies may establish a system of rewards and incentives, including streamlined regulatory processes, based on a reporting entity's demonstrated commitment to ESG practices, policies and reporting.

CHAPTER V
PROHIBITED ACTS AND PENALTIES

Sec. 17. *Willful Certification of Incomplete, Inaccurate, False; or Misleading Statements or Reports; Penalties.* — Any person who willfully certifies a report required under this Act, knowing that the same contains incomplete, inaccurate, false or misleading information or statements, shall be punished with a fine ranging from Twenty Thousand Pesos (P20,000.00) to Two Hundred Thousand Pesos (P200,000.00). When the wrongful certification is injurious or detrimental to the public, the assurance provider or the responsible person may also be punished with a fine ranging from Forty Thousand Pesos (P40,000.00) to Four Hundred Thousand Pesos (P400,000.00).

Sec. 18. *Collusion by the Assurance Provider; Penalties.* — An assurance provider who, in collusion with the corporation's directors or representatives, certifies the corporation's sustainability reports and financial statements despite its incompleteness or inaccuracy, its failure to give a fair and accurate presentation of the corporation's condition, or despite containing false or misleading statements, shall be punished with a fine ranging from Eighty Thousand Pesos (P80,000.00) to Five Hundred Thousand Pesos (P500,000.00). When the statement or report certified is fraudulent or has the effect of causing injury to the general public, the assurance provider or responsible officer may be punished with a fine ranging from One Hundred Thousand Pesos (P100,000.00) to Six Hundred Thousand Pesos (P600,000.00).

Sec. 19. *Administrative Penalties.* — Any violation of this Act, its IRR and other related regulations shall be subject to the following administrative penalties:

1. Imposition of a fine of not less than Ten Thousand Pesos (P10,000.00) but not more than One Million Pesos (P1,000,000.00), plus not more than Two Thousand Pesos (P2,000.00) for each day of continuing violation;
2. Suspension or revocation of any registration for the offering of securities;
3. In case of material misrepresentation or misstatements in the Sustainability Report, disqualification from being an officer, member of the Board of Directors, or person performing similar functions;
4. Imposition of monetary penalties not exceeding Five Hundred Thousand Pesos (P500,000) and/or disciplinary measures to registered assurance providers in case of non-compliance of professional standards, misconduct or breach of independence and ethical requirements as required in this Act; and
5. Suspension or revocation of the assurance providers' registration with the SEC;

Provided, that the fines and penalties imposed under this Act shall be without prejudice to the administrative penalties that the SEC may impose pursuant to the RCC, SRC, and other relevant laws and regulations.

CHAPTER VI
MISCELLANEOUS PROVISIONS

Sec. 20. *Implementing Rules and Regulations.* – Within ninety (90) days from the approval of this Act, the SEC, in consultation with the stakeholders concerned, shall formulate and promulgate the necessary rules and regulations to effectively implement the provisions of this Act.

Sec. 21. *Separability Clause.* – If any part or provision of this Act is declared invalid or unconstitutional, such declaration shall not affect in any manner other parts or provisions hereof.

Sec. 22. *Repealing Clause.* – All laws, decrees, proclamations, issuances or ordinances that are contrary to or inconsistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

Sec. 23. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,