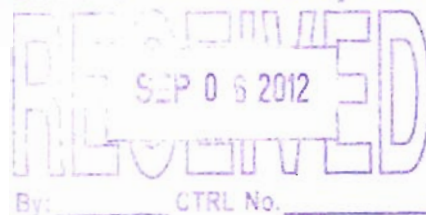




Office of the President of the Philippines
GOVERNANCE COMMISSION
FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS
Room 479, Mabini Hall, Malacañang Compound, Manila, Philippines 1005

Office of the Secretary-DBM



GCG MEMORANDUM CIRCULAR No. 2012 – 06

OWNERSHIP AND OPERATIONS MANUAL GOVERNING THE GOCC SECTOR

WHEREAS, pursuant to the State declared policy of treating Government-Owned or -Controlled Corporations (GOCCs) as significant tools for economic development, and consistent with the desire of the State to actively exercise its ownership rights in GOCCs and to promote growth by ensuring that their operations are consistent with national development policies and programs, the **Governance Commission for GOCCs (GCG)**, in the exercise of its mandate under Section 5(c) of Republic Act No. 10149, approved the **OWNERSHIP AND OPERATIONS MANUAL GOVERNING THE GOCC SECTOR ("MANUAL")** at its *En Banc* meeting held on 26 April 2012 for formal submission to the President of the Philippines for His Excellency's approval of what would constitute as an organic document for the GOCC Sector;

WHEREAS, HIS EXCELLENCY, **PRESIDENT BENIGNO S. AQUINO III**, formally approved the Code for formal promulgation on _____;

NOW, THEREFORE, the Commission hereby formally promulgates and implements the Code as follows:

I.

GENERAL INTRODUCTION

ARTICLE 1. Definition of Terms. – For purposes of this Manual, the following terms shall have the following meanings:

"Act" refers to Republic Act No. 10149, and officially named the "GOCC Governance Act of 2011."

"Affiliate" refers to a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned or controlled, directly or indirectly, by the GOCC.¹

"Alternative Dispute Resolution System" (ADR) means any process or procedure used to resolve a dispute or controversy, other than by

¹Sec. 3(a), R.A. No. 10149.



adjudication of a presiding judge of a court, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.²

"*Appointive Directors*" refer to: (1) in the case of a Chartered GOCC, all members of its Board of Directors/Trustees who are not *ex officio* members thereof; (2) in the case of a Nonchartered GOCCs, the members of its Board of Directors/Trustees whom the State nominates or is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and (3) in the case of a Subsidiary or an Affiliate, members of its Board of Directors/Trustees whom the GOCC nominates or is entitled to nominate to the extent of its percentage shareholdings in such Subsidiary or Affiliate.³

"*Articles of Incorporation*" refers to primary franchise of a Nonchartered GOCC that, once approved and registered with the Securities and Exchange Commission (SEC) by the issuance of the certificate of incorporation under its official seal, commences the existence of the GOCC as a separate juridical person with a right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.⁴

"*Board of Directors/Trustees*" or "*Board*" or "*Governing Board*" refer to the collegial body that exercises the corporate powers, conducts all business and controls or holds all properties, of a GOCC, whether it be formally referred to as the "Board of Directors" or "Board of Trustees" or some other term in its Charter, Articles of Incorporation, or By-laws.⁵

"*Breakthrough Results*" refer to the achievement of corporate goals or other performance indicators as determined by the GOCC or its Supervising Agency.⁶

"*By-laws*" refers to the basic instrument adopted by a Nonchartered GOCC and duly registered with the Securities and Exchange Commission (SEC) for its internal government, and to regulate the conduct and prescribe the rights and duties of its members or stockholders towards the GOCC and among themselves in reference to the management of its affairs.⁷

"*Charter*" refers to the formal act of Congress creating a Chartered GOCC and defining its franchise.

"*Charter Statement*" refers to a statement of the GOCC's vision, mission and core values.⁸

"*Chartered GOCC*" refers to a GOCC, including a GFI, created and vested with functions by a special law.⁹

²ADR Act, R.A. No. 9285

³Sec. 3(b), R.A. No. 10149.

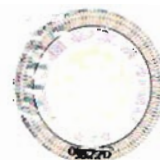
⁴Adopted from Secs. 2 and 19, Corporation Code of the Philippines.

⁵Sec. 3(c), R.A. No. 10149.

⁶Sec. 3(d), R.A. No. 10149.

⁷*Gokongwei, Jr. v. Securities and Exchange Commission*, 89 SCRA 336 (1979).

⁸Sec. 3(e), R.A. No. 10149.



"*Chief Executive Officer*" ("CEO") refers to the highest ranking corporate executive who heads Management, who could be named as the President or the General Manager, Chairman or the Administrator of a GOCC.¹⁰

"COA" refers to the Commission on Audit.

"DBM" refers to the Department of Budget and Management.

"*Department*" refers to an executive department created by law, which shall include any instrumentality having or assigned the rank of a department, regardless of its name or designation.¹¹

"DOF" refers to the Department of Finance.

"*Ex Officio Board Member*" ("*Ex Officio Director*") refers to any individual who sits or acts as a member of the Board of Directors/Trustees by virtue of one's title to another office, and without further warrant or appointment.¹²

"*Extraordinary Diligence*" refers to the measure of care and diligence that must be exercised by Directors and Officers in discharging their functions, in conducting the business and dealing with the properties and monies of GOCCs, which is deemed met when Directors and Officers act using the utmost diligence of a very cautious person taking into serious consideration all the prevailing circumstances and Material Facts, giving due regard to the legitimate interests of all affected Stakeholders.¹³

"*Officers*" refer to the executive officers of the GOCC as provided in its Charter or By-laws, such as the CEO, President, Administrator, General Manager, Vice President, Corporate Secretary, Compliance Officer, Treasurer, Chief Financial Officer, Chief Investment Officer.¹⁴

"*Fit and Proper Rule*" refers to a set of standards for determining whether a member of the Board of Directors/Trustees or the CEO is qualified to hold a position in a GOCC which shall include, but not be limited to, standards on integrity, experience, education, training and competence, which standards are set forth under GCG Memorandum Circular No. 2012-05.¹⁵

"*Government Agency*" refers to any of the various units of the Government of the Republic of the Philippines, including a department, bureau, office, instrumentality or GOCC, or a local government or a distinct unit therein.¹⁶

"*Government Corporate Governance Standards*" refer to a set of principles derived from law and practices, rules and standards prescribed by the GCG that generate long-term and desirable economic value for the

⁹Sec. 3(f), R.A. No. 10149.

¹⁰Sec. 3(g), R.A. No. 10149.

¹¹Sec. 3(h), R.A. No. 10149.

¹²Sec. 3(i), R.A. No. 10149.

¹³Derived from Sections 19 and 21 of R.A. No. 10149.

¹⁴Sec. 3(q), R.A. No. 10149.

¹⁵Sec. 3(j), R.A. No. 10149.

¹⁶Sec. 3(k), R.A. No. 10149.



State; also refers to a system whereby shareholders, creditors, and other stakeholders of a GOCC ensure that Management enhances the value of the GOCC as it competes in an increasingly global market place.¹⁷

"*Government Financial Institutions*" ("GFI") refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and which are either (1) registered with or directly supervised by the *Bangko Sentral ng Pilipinas*; or (2) collecting or transacting funds or contributions from the public and places them in financial instruments or assets such as deposits, loans, bonds and equity, including, but not limited to, the Government Service Insurance System and the Social Security System.¹⁸

"*Government Instrumentalities with Corporate Powers*" (GICP)/ "*Government Corporate Entities*" (GCE) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a Charter.¹⁹

"*Government-Owned or -Controlled Corporation*" ("GOCC") refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however*, that for purposes of the Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein.²⁰

"*Holding GOCC*" refers to a GOCC that owns, holds or control, directly or indirectly, through one or more intermediaries, fifty percent (50%) or less of the outstanding capital stock of an Affiliate.

"*NEDA*" refers to the National Economic Development Authority.

"*Nonchartered GOCC*" refers to a GOCC organized and operating under Batas Pambansa Bilang 68, or "The Corporation Code of the Philippines".²¹

"*Parent GOCC*" refers to a GOCC that owns, holds or control, directly or indirectly, through one or more intermediaries, at least a majority of the outstanding capital stock of the Subsidiary.

"*Per Diems*" refer to the compensation granted to members of the Board of Directors or Trustees of a GOCC for actual attendance in meetings.²²

¹⁷ Sec. 3(l), R.A. No. 10149.

¹⁸ Sec. 3(m), R.A. No. 10149.

¹⁹ Sec. 3(n), R.A. No. 10149.

²⁰ Sec. 3(o), R.A. No. 10149.

²¹ Sec. 3(p), R.A. No. 10149.

²² Sec. 3(s), R.A. No. 10149.



"Performance Evaluation System" ("PES") refers to the process of appraising the accomplishments of GOCCs in a given fiscal year based on set performance criteria, targets and weights.²³

"Performance Scorecard" refers to a governance and management tool forming part of the performance evaluation system which consists of a set of measures, targets and initiatives that facilitate the achievement of breakthrough results and performance through the effective and efficient monitoring and coordination of the strategic objectives of the GOCC.²⁴

"President" refers to the President of the Republic of the Philippines.²⁵

"Public Officials" or "Public Officers" refer to elective and appointive officials and employees, whether permanent or temporary, whether in the career or non-career service, whether or not they receive compensation, regardless of amount,²⁶ who are in the National Government, and all other instrumentalities, agencies or branches of the Republic of the Philippines, including GOCCs, and their Subsidiaries.²⁷

"Public-Private Partnership" ("PPP") or any of the variants of engaging private sector participation in the delivery of public goods and services enunciated in Republic Act No. 7718, as amended, otherwise known as the "Build-Operate-and-Transfer Law."

"Related Corporation" refers to a Subsidiary or Affiliate of a GOCC.²⁸

"Secretary" refers to the person vested with the authority and responsibility for the exercise of the mandate of the Department, for the discharge of its powers and functions, and who has supervision and control of the Department.²⁹

"Service-Wide Agency" refers to a Government Agency, such as the DBM, COA and the Civil Service Commission, which by the very nature of its functions, including but no limited to, auditing, budget, training, etc., encompass a wide range of services to other Government Agencies, including GOCCs.

"Stakeholder" refers to any individual or entity for whose benefit the GOCC has been constituted, or whose life, occupation, business or well-being is directly affected, whether favorably or adversely, by the regular transactions, operations, or pursuit of the business or social enterprise for which the GOCC has been constituted, and which would include a stockholder, member, or other investor in the GOCC, management, employees, supply creditors, or the community in which the GOCC operates.

"State" refers to the Republic of the Philippines.

²³Sec. 3(f), R.A. No. 10149.

²⁴Sec. 3(u), R.A. No. 10149.

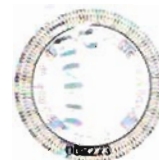
²⁵Sec. 3(v), R.A. No. 10149.

²⁶Sec. 3(b), R.A. No. 6713.

²⁷Sec. 3(a), R.A. No. 10149.

²⁸Sec. 3(w), R.A. No. 10149.

²⁹Sec. 3(x), R.A. No. 10149.



"Strategy Map" refers to an integrated set of strategic choices or objectives drawn by the governing body, the successful execution of which results in the achievement of the GOCC's vision in relation to its mission or purpose for having been created.³⁰

"Subsidiary" refers to a corporation where at least a majority of the outstanding capital stock is owned or controlled, directly or indirectly, through one or more intermediaries, by the GOCC.³¹

"Supervising Agency" refers to a Government Agency to which a GOCC is attached to for purposes of policy and program coordination and for general supervision.³²

1.1. *Singular Term Include the Plural.* – Unless otherwise indicated in this Manual, any reference to a singular shall apply as well to the plural, and vice versa.

ART. 2. Coverage. – This Manual shall cover all GOCCs, GICPs/GCEs and GFIs, including their Subsidiaries, covered by the Act.

II.

STATE OWNERSHIP IN THE GOCC SECTOR

ART. 3. Objective of State Ownership in GOCCs. – The State, recognizing the potential of the GOCC Sector to become a significant tool for economic development, shall:

- 3.1. Actively exercise its ownership rights in GOCCs under a clear and consistent Ownership Policy, as such policy is set forth under Article 4 below; and
- 3.2. Promote growth by ensuring that the governance of GOCCs is carried out in a transparent and accountable manner, with their operations being consistent with national development policies and programs.³³

ART. 4. State Ownership Policy. – Towards achieving such Objective, the State shall ensure that:

- 4.1. The primary role of the private sector in the economy is recognized and that private enterprises are encouraged to undertake desirable economic activities.³⁴ In pursuing this policy, and unless there is a greater public interest that may be served, GOCCs shall refrain from engaging in activities adequately serviced by the private sector or

³⁰Sec. 3(y), R.A. No. 10149.

³¹Sec. 3(z), R.A. No. 10149

³²Adopted from Sec. 42, Chapter 9, Book IV, Revised Administrative Code of 1987 (Executive Order No. 292, 25 July 1987)

³³Adopted from Sec. 2, R.A. No. 10149, and OECD Guidelines – "The State Acting as an Owner," at p. 13.

³⁴Sec. 20, Art. XII (National Economy and Patrimony) of the 1987 Constitution: "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments." See also the Whereas clause of Pres. Proclamation No. 50, dated 08 December 1986.



adopt PPP schemes for operating enterprises and/or capital undertakings where such approach qualifies under existing laws, such as the Build-Operate-and-Transfer Law.³⁵

- 4.2. In areas adequately served by the private sector but where GOCCs have been engaged in, the engaging GOCCs shall ensure that there is a clear separation between the regulatory functions and proprietary activities of GOCCs in order to achieve a level playing field with corporations in the private sector performing similar commercial activities for the public.³⁶
- 4.3. The corporate form of organization through which government carries out activities is utilized judiciously.³⁷
- 4.4. The State as an active owner, acting through the National Government, shall exercise its ownership rights according to the legal structure of each GOCC.³⁸
- 4.5. Corporate governance of GOCCs is enhanced to promote public accountability, transparency, responsibility, professionalism and effectiveness, in the delivery of goods and services to support the national goals.³⁹
- 4.6. The operations of GOCCs are rationalized and monitored centrally, primarily through the GCG, in order that government assets and resources are used efficiently and the Government exposure to all forms of liabilities including subsidies is warranted and incurred through prudent means.⁴⁰

B. ROLES AND RELATIONSHIPS ABOUNDING THE GOCC SECTOR

ART. 5. State's Role and Relationship with GOCCs. – The State, as the Owner representing the sovereign people, constitutes the controlling interest in, or is the majority stockholder of, GOCCs and Subsidiaries, and thereby exercises all the prerogatives of ownership in every GOCC, including, but not limited to the:

- (a) *Right to register its equity holdings* in the books of the GOCC for all its equity investments therein, together with the *Right to be issued certificates of stock* representing its investments in the GOCC;
- (b) *Right to dividends*, when declared, pertaining to its equity holdings in the GOCC;

³⁵ Rep. Act No. 6957, as amended by R.A. No. 7718.

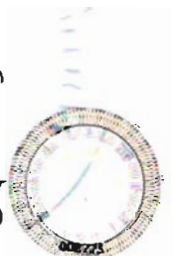
³⁶ Sec. 2(g), R.A. No. 10149.

³⁷ Sec. 2(a), R.A. No. 10149.

³⁸ Adopted from the OECD Guidelines – "The State Acting as an Owner," II-F, p. 13.

³⁹ Taken from Sec. 4(3) of the ADB draft of Ownership Manual submitted to the GCG dated 12 March 2012 (hereinafter referred to as "ADB Proposed Manual").

⁴⁰ Sec. 2(b), R.A. No. 10149.



- (c) *Right to dispose of its equity investment* in the GOCC, including the right to pursue the reorganization, merger, streamlining, abolition or privatization of a GOCC, under a set of criteria provided for in the Act;⁴¹
- (d) *Right to representation* in all stockholders' or members' meetings of the GOCC, and the *Right to vote* on its shares in all meetings where the stockholders' or members' vote is obtained or necessary to undertake or to ratify corporate activities, contracts or transactions;⁴²
- (e) *Right to representation*, namely to nominate, elect or appoint, and remove and replace, the members of the Governing Board of every GOCC;
- (f) *Right to formulate and enforce governance standards* to realize its Ownership Policy for GOCCs; and
- (g) *Right to receive a proportional share in the net assets* of the GOCC upon its dissolution.

ART. 6. State's Role and Relationship with GOCCs Holding in Trust the Funds or Contributions of Members. – The State recognizes the exemplary role of certain GOCCs which are constituted and operated to hold in trust the contributions of their members, such as the Social Security System (SSS) and the Government Service Insurance System (GSIS), where the role of the State is not that of an active owner or investor, but as a guardian to promote the best interests of the members/contributors, whose contributions are to be prudently invested for their benefit, and also as a guarantor for the contingent liabilities that the State may assume in instances when such GOCCs are financially unable to provide the benefits to the members/contributors of such systems.

ART. 7. State's Role and Relationship with Affiliates. – The State, as an Investor in every Affiliate, has the same prerogatives and rights as other stockholders thereof. In addition, the State, acting by itself or through the Governing Board of the Holding GOCC, possesses and enjoys all the common law rights pertaining to all stockholders in private corporations, including but not limited to:

- 7.1. *Pre-emptive right* to subscribe to all issues or disposition of shares of any class, in proportion to its shareholdings in the Affiliate, and to the extent allowed by law;⁴³

⁴¹ Sec. 5(a), R.A. No. 10149.

⁴² Adopted from the OECD Guidelines – "The State Acting as an Owner," II-F(1), p. 13.

⁴³ Sec. 39, Corporation Code: "Power to deny pre-emptive right – All stockholders of a stock corporation shall enjoy pre-emptive right to subscribed to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto: *Provided*, That such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt."



- 7.2. *Right of appraisal*, to be paid the fair value of its shares of stock in the Affiliate when it has dissented to a corporate action or transaction to which the law grants the right of appraisal;⁴⁴ and
- 7.3. *Right to file a derivative suit* on behalf of the Affiliate to enforce the right of, or to recover damages due to, the Affiliate whenever the Board of the Affiliate does not have the legal capacity, or unjustly refuses, to exercise business judgment for the best interests of the Affiliate.

ART. 8. State Acting Through National Government. – The National Government is the direct Agent of the State in pursuing the State's role and responsibilities, and enforcing the State's rights and prerogatives as the active owner of GOCCs and Subsidiaries, and as an investor in Affiliates.

- 8.1. *State Acts Primarily Through the President.* – As an agent of the State in the GOCC Sector, the National Government is represented directly by the President of the Philippines, to exercise the State's ownership rights over GOCCs.
- 8.2. *State Acting Through the GCG.* – In the following specific instances under the Act, the National Government is represented by the GCG, to exercise specified State rights of ownership over GOCCs, thus:
- (a) Evaluate the performance and determine the relevance of GOCCs, and pursue the re-organization, merger, streamlining, abolition, or privatization of GOCCs;⁴⁵
 - (b) Provide for the classification and sub-classification of GOCCs;⁴⁶
 - (c) Adopt an Ownership and Operations Manual and Government Corporate Standards governing GOCCs, in consultation with the relevant Government Agencies and Stakeholders;⁴⁷
 - (d) Recommend to the Governing Boards the suspension of any of their members who participated by commission or omission in the approval of an act which constitutes a violation or noncompliance with the Ownership Manual or a breach of their fiduciary duties to the GOCC and/or its Stakeholders;⁴⁸
 - (e) Promulgate, with the approval of the President of the Philippines, and implement the Fit and Proper Rule that shall identify the

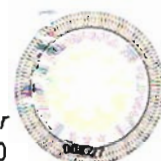
⁴⁴Sec. 81, Corporation Code: "SEC. 81. *Instances of appraisal right.* – Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances: 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending shares of any class, or of extending or shortening the term of corporate existence; 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and 3. In case of merger or consolidation."

⁴⁵Sec. 5(a), R.A. No. 10149.

⁴⁶Sec. 5(b), R.A. No. 10149.

⁴⁷Sec. 5(c), R.A. No. 10149.

⁴⁸Sec. 5(d), R.A. No. 10149.



necessary skills and qualifications required of Appointive Directors;⁴⁹

- (f) Establish and implement Performance Evaluation Systems, including Performance Scorecards, applicable to all GOCCs in general, and to the various GOCC classifications, in particular;⁵⁰
- (g) Conduct periodic study, examination, evaluation and assessment of the performance of the GOCCs, receive, and in appropriate cases, require reports on the operations and management of the GOCCs including, but not limited to, the management of their assets and finances of the GOCCs;⁵¹
- (h) Provide technical advice and assistance to the Supervising Agencies in setting performance objectives and targets for their attached GOCCs, and in monitoring such GOCCs' performance *vis-a-vis* established objectives and targets;⁵²
- (i) Conduct compensation studies and, pursuant thereto, develop and recommend to the President a competitive Compensation and Position Classification System (CPCS) which shall apply to all officers and employees of GOCCs whether covered by or exempt from, the Salary Standardization Law;⁵³
- (j) Formulate the *per diems*, allowances, incentives and compensation structure for the members of the Governing Boards;⁵⁴
- (k) Coordinate and monitor the operations of GOCCs to ensure their alignment and consistency with the national development policies and programs,⁵⁵ and render semi-annual progress report to the President and to Congress, providing for the performance assessment of the GOCCs and recommending clear and specific actions;⁵⁶
- (l) Review the functions of each GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President, in consultation with the Supervising Agency, such plan of action, such as privatization of the GOCC's commercial operations, or the transfer of the regulatory functions to the appropriate Government Agency, to ensure that commercial functions of the GOCC do not conflict with such regulatory functions;⁵⁷
- (m) Request, through the GCG Chairman, a special COA audit of any GOCC for any specific purpose or, when authorized by law, request authority from COA to allow an audit by independent auditors; and

⁴⁹Secs. 5(e) and 16, R.A. No. 10149.

⁵⁰Sec. 5(f), R.A. No. 10149.

⁵¹Sec. 5(g), R.A. No. 10149.

⁵²Sec. 5(i), R.A. No. 10149.

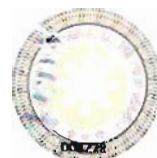
⁵³Secs. 5(h) and 8, R.A. No. 10149.

⁵⁴Sec. 23, R.A. No. 10149.

⁵⁵Sec. 5(j), R.A. No. 10149.

⁵⁶Sec. 5(k), R.A. No. 10149.

⁵⁷Sec. 5(l), R.A. No. 10149.



(n) Review and recommend to the President of the Philippines for approval the plan by any Government Agency:

(1) For the establishment and incorporation of a GOCC or a Related Corporation pursuant to the provisions of the Corporation Code of the Philippines,⁵⁸ or

(2) To purchase a corporation or acquire controlling interest in any corporation.⁵⁹

8.3. *State Acting Through the Supervising Agencies.* – Supervising Agencies shall continue to perform their role and functions over their attached GOCCs, as specified in Article II of Administrative Order No. 59 (s. 1988) insofar as these are not inconsistent with or superseded by provisions of the Act. Supervising Agencies shall extend autonomy at the operational level to its attached GOCCs, and their role in corporate decision-making shall be limited to:

(a) Ensuring that proposed corporate plans and programs of the Governing Boards are congruent with the Supervising Agencies' sectoral objectives and priorities in support of, *inter alia*, the President's Social Contract Agenda and NEDA's Medium-Term Philippine Development Plan;

(b) Determining the implications of such proposed plans and programs on those of other GOCCs attached to the Supervising Agency;

(c) Reviewing the assumptions given and calculations made in justifying the viability of such proposed plans and programs and passing upon the targets proposed to be achieved; and

(d) Monitoring on a periodic basis the operating results and financial performance of the attached GOCCs to ensure that targets for their sectors are being faithfully pursued.⁶⁰

8.4. *State Acting Through Service-Wide Agencies.* – Service-Wide Agencies dealing with and/or affecting the operations of GOCCs shall continue to exercise their respective functions, observing however the policies and guidelines herein provided to the extent that they are not inconsistent with their duties and responsibilities as provided for in specific laws.⁶¹

In particular, the DOF shall continue performing fiscal planning and programming in relation to GOCCs, such as but not limited to:

(a) Management of GOCCs' contingent liabilities;

(b) Evaluation and approval of borrowing programs;

(c) Evaluation and approval of investments and financing plans; and

⁵⁸ Sec. 27, R.A. No. 10149.

⁵⁹ Sec. 28, R.A. No. 10149

⁶⁰ Taken from Sec. 11 of the ADB Manual.

⁶¹ Taken from Sec. 12 of the ADB Manual.



- (d) Evaluation and approval of capital outlays that are elevated to the Investment Coordinating Committee of the NEDA.

The DBM shall continue to:

- (a) Evaluate and recommend the annual budgetary support to GOCCs; and
- (b) Evaluate and approve the annual corporate operating budgets (COBs) of GOCCs.

8.5. *State Acting Through the Governing Boards of GOCCs and Subsidiaries.* – Having been vested directly by law with the legal capacity and authority to exercise all corporate powers, conduct all the business, and to hold all the properties of the GOCC,⁶² mandating under the Act that ultimately all *Ex Officio* Directors and Appointive Directors of the GOCCs are appointed by the President of the Philippines, the State has affirmed the public policy that the Governing Boards of GOCCs constitute the State's direct representatives in, and shall be directly accountable to the State for, the governance and operations of GOCCs.

C. RESPONSIBILITIES OF THE NATIONAL GOVERNMENT IN THE OPERATIONS AND GOVERNANCE OF GOCCs

ART. 9. Principle of Board Autonomy Pursued within the State's Policy of Active Ownership. – The National Government shall not be involved in the day-to-day management of GOCCs, and the Boards shall be allowed full operational autonomy to achieve the defined objectives of the GOCCs.⁶³ The role of the National Government, acting through the GCG and/or the Supervising Agency, shall be to ensure that:

- 9.1. The governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness.⁶⁴
- 9.2. The Governing Boards are competent to carry out their functions, fully accountable to the State as its fiduciaries, and always acting in the best interest of the State.⁶⁵
- 9.3. There are instituted well-structured, transparent, and fully implemented nomination, appointment or election processes for the Appointive Directors in GOCCs, Subsidiaries and Affiliates.⁶⁶
- 9.4. Subject to the provisions of the Act, there are adopted reasonable, justifiable and appropriate remuneration and incentives schemes for the Directors/Trustees, Officers and employees of GOCCs and their

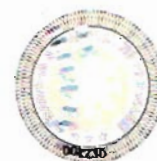
⁶² Adopting Sec. 23, Corporation Code.

⁶³ Adopted from the OECD Guidelines – "The State Acting as an Owner," II-B, p. 13.

⁶⁴ Sec. 2(c), R.A. No. 10149.

⁶⁵ Sec. 2(e), R.A. No. 10149.

⁶⁶ Adopted from OECD Guidelines – "The State Acting as an Owner," II-F(2), p. 13.



Subsidiaries, to foster the long-term interest of the companies that would attract and motivate qualified professionals,⁶⁷ but at the same time prevent or deter the granting of unconscionable and excessive remuneration packages.⁶⁸

9.5. There is instituted a reporting and evaluation system, which will require that the periodic disclosure and examination of the operations and management of the GOCCs, their assets and finances, revenues and expenditures, is enforced.⁶⁹

9.6. The operations of GOCCs are rationalized and monitored centrally in order that government assets and resources are used efficiently and that government exposure to all forms of liabilities, including subsidies, is warranted and incurred through prudent means.⁷⁰

ART. 10. *Provision of Adequate Operational Flexibility.* – GOCCs shall be provided with adequate operational flexibility in order to function properly and efficiently, especially under conditions of market competition. Such flexibility shall nevertheless be consistent with the requirements of public accountability.⁷¹

10.1. *Differential Treatment.* – To implement the concept of adequate operational flexibility, GOCCs shall, subject to existing laws, be accorded differential treatment by the various Service-Wide Agencies, such as the DBM, the DOF, the COA, the CSC and NEDA, in the exercise of their respective powers and functions. Such agencies shall distinguish corporate organizational and procurement practices of GOCCs from those of bureaus and regular line agencies of the National Government.⁷²

10.2. *GCG Classification of GOCCs.* – In the formulation of the differential treatment of GOCCs, GCG shall classify them in the following classification: (1) Developmental/Social Corporations; (2) Proprietary Commercial Corporations; (3) Government Financial, Investment and Trust Institutions; (4) Corporations with Regulatory Functions; and (5) Other Classifications as may be provided for by the GCG, without prejudice to further sub-classifications in each category and/or any other classification based on parameters as GCG may find relevant or material such as, but not limited to, industry type.⁷³

ART. 11. *Competitive Neutrality.* – In order to achieve a level playing field with corporations in the private sector performing similar commercial activities for the public, the National Government shall ensure that there is a clear separation between the regulatory and proprietary activities of GOCCs.⁷⁴

⁶⁷ Adopted from OECD Guidelines – "The State Acting as an Owner," II-F(5), p. 13

⁶⁸ Sec. 2(f), R.A. No. 10149.

⁶⁹ Sec. 2(d), R.A. No. 10149. See also OECD Guidelines – "The State Acting as an Owner," II-F(3), p. 13.

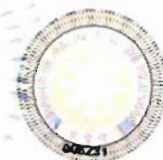
⁷⁰ Sec. 2(b), R.A. No. 10149.

⁷¹ Adopted from Sec. 4 of Admin. Order No. 59, s.1988.

⁷² Adopted from Sec. 5 of Admin. Order No. 59 (s.1988).

⁷³ Sec. 5(b), R.A. No. 10149

⁷⁴ Sec. 2(g), R.A. No. 10149.



Unless justified by a greater public interest, Government Agencies that have the discretion to grant competitive advantages and benefits to GOCCs, shall avoid the granting of such advantages and benefits, especially to GOCCs that directly or indirectly compete with the private sector. The advantages and benefits mentioned herein include Government guarantees for debts incurred and special privileges such as partial or full exemption from the payment of taxes, duties, imposts, and other charges. This rule shall not apply when the GOCC concerned is organized solely for cultural, educational, civic or scientific purposes.⁷⁵

ART. 12. Pursuit of National Development. – In pursuing the exercise of State ownership in the GOCC Sector, the National Government shall ensure that the promotion of the growth and development of GOCCs shall be consistent with the Social Contract of the President and the Medium-Term Philippine Development Plan issued by the NEDA.⁷⁶ The National Government, through the Supervising Agencies to which the GOCCs are respectively attached, shall exercise policy and program coordination,⁷⁷ ensuring that the policies and programs of such GOCCs, such as their budgets and operations, as well as their production, financial and other corporate targets, and disposition of profits, are consistent with sectoral policies and programs.⁷⁸

ART. 13. Restraint in the Creation and Acquisition of GOCCs. – Restraint shall be exercised in the creation or acquisition of a corporation by any Government Agency.⁷⁹ Any Government Agency seeking to purchase a corporation or acquire controlling interest therein, including a planned conversion into equity of loans previously extended by a GOCC to a privately owned corporation organized under the Corporation Code of the Philippines, which conversion will result in majority ownership or control by such GOCC in the debtor corporation,⁸⁰ shall submit its proposal to the GCG for review and approval of the President.⁸¹

D. ROLE AND RESPONSIBILITIES OF GOCCs

ART. 14. GOCCs as Tools for Economic Development. – GOCCs and Subsidiaries, being wholly- or majority-owned by the State, constitute significant tools of the State to pursue economic development, and a means to promote growth by ensuring that their operations are consistent with national development policies and programs.⁸²

ART. 15. Governing Board Primarily Responsible for Corporate Governance. – The Governing Board of every GOCC shall be primarily responsible for the management and operation of the GOCC inasmuch as:

⁷⁵ Sec. 6, Admin. Order No. 59, s 1988.

⁷⁶ Sec. 5(c), R.A. No. 10149.

⁷⁷ Sec. 38(3), Exec. Order No. 292, s 1987.

⁷⁸ Sec. 8, Admin. Order, No. 59, s.1988.

⁷⁹ Adopted from Sec. 17 of Admin. Order No. 59, s. 1988.

⁸⁰ Adopted from Sec. 18 of Admin. Order No. 59, s.1988.

⁸¹ Sec. 28, R.A. No. 10149.

⁸² Adopted from Sec. 2 of R.A No. 10149.



- 15.1. All corporate powers of the GOCC are vested directly by law in its Governing Board.⁸³
- 15.2. The members of the Governing Board of every GOCC have been imposed by law with the fiduciary duties to:
 - (a) Always act in the best interest of the GOCC, with utmost good faith in all its dealings with the property and monies of the GOCC;⁸⁴
 - (b) Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;⁸⁵
 - (c) Apply sound business principles to ensure the financial soundness of the GOCC;⁸⁶ and
 - (d) Hold a trustee relation with respect to the properties, interests and monies of the GOCC.⁸⁷

ART. 16. Particular Obligations of the Governing Board. – Governing Boards, shall ensure that they perform their statutorily-defined role as the State's agents in pursuing economic growth and development within the GOCC Sector, by –

- 16.1. Ensuring that government assets and resources are used efficiently and that government exposure to all forms of liabilities and subsidies is warranted and incurred through prudent means;⁸⁸
- 16.2. Ensuring that the operations and governance are carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness;⁸⁹
- 16.3. Complying faithfully with the reporting and evaluation system governing GOCCs, including the periodic disclosure and examination of their operations and management, their assets and finances, revenues and expenditure;⁹⁰ and
- 16.4. Clearly separating the regulatory functions from their proprietary activities in order to achieve a level playing field with the private sector involved in similar commercial activities for the public.⁹¹

⁸³Sec. 23, Corporation Code: "Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified."

⁸⁴Opening paragraph of Sec. 19, R.A. No. 10149.

⁸⁵Sec. 19(b), R.A. No. 10149.

⁸⁶Sec. 19(d), R.A. No. 10149.

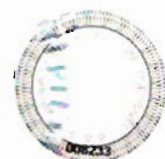
⁸⁷Sec. 20, R.A. No. 10149.

⁸⁸Sec. 2(b), R.A. No. 10149.

⁸⁹Sec. 2(c), R.A. No. 10149.

⁹⁰Sec. 2(d), R.A. No. 10149.

⁹¹Sec. 2(g), R.A. No. 10149.



E. ROLE AND RESPONSIBILITIES OF THE GCG

ART. 17. GCG as the Instrumentality of State Ownership. – The exercise by the State of its ownership rights has been clearly identified with the National Government, by having constituted under the Act the GCG as the “central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies”⁹² governing the GOCC Sector.

17.1. In the performance of its functions and in the review or evaluation of every GOCC, the GCG is mandated to engage the participation of the Secretary or the highest ranking official of the Supervising Agency to which the GOCC is attached.⁹³

17.2. The GCG is accountable to and/or has clearly defined relationships with:⁹⁴

- (a) President of the Philippines, to whose Office the GCG is attached,⁹⁵ and to whom GCG is mandated to submit quarterly reports,⁹⁶ a semi-annual progress report, and an annual report (within 120 days from the close of the year) on the performance of GOCCs;⁹⁷
- (b) Congress, as the GCG is mandated to submit to Congress a semi-annual progress report, and an annual report (within 120 days from the close of the year) on the performance of GOCCs;⁹⁸
- (d) Commission on Audit (COA), as the GCG is authorized by law to seek the periodic special audit of the thirty (30) GOCCs with the highest total assets;⁹⁹
- (e) Securities and Exchange Commission (SEC), since no new GOCC or Related Corporation can be registered and organized under the Corporation Code of the Philippines unless the application or registration is accompanied by an endorsement from the GCG stating that the President has approved the same;¹⁰⁰
- (f) Supervising Agency of each GOCC, (i) with which GCG has to coordinate in pursuing the privatization of the commercial operations of GOCCs when they conflict with their regulatory functions;¹⁰¹ or (ii) when seeking to purchase a corporation or acquire controlling interest therein, as the law requires them to submit its proposal to the GCG for review and approval of

⁹² Sec 5, R.A. No. 10149.

⁹³ Last paragraph of Sec. 5, R.A. No. 10149.

⁹⁴ OECD Guidelines II-E: “The co-ordinating or ownership entity should be held accountable to representative bodies such as the Parliament and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.” at p. 13.

⁹⁵ Sec. 5, R.A. No. 10149.

⁹⁶ Sec. 5(j)(3), R.A. No. 10149.

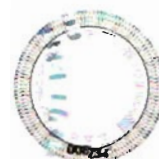
⁹⁷ Sec. 5(k), R.A. No. 10149.

⁹⁸ Sec. 5(k), R.A. No. 10149.

⁹⁹ Sec. 26, R.A. No. 10149.

¹⁰⁰ Sec. 27, R.A. No. 10149.

¹⁰¹ Sec. 5(l), R.A. No. 10149.



the President;¹⁰² (iii) with which GCG shall extend technical advice and assistance in setting performance objectives and targets for their attached GOCCs and in monitoring their performance as part of the PES; and

- (g) Privatization Council (PC) and the Privatization and Management Office (PMO), as the law requires the GCG to take-over the privatization of GOCCs that have been identified by the PC and approved for privatization by the President at the end of two (2) years after the effectivity of R.A. No. 10149¹⁰³ (i.e., 27 July 2013).¹⁰⁴

ART. 18. *Nomination, Shortlisting and Appointment of Appointive Directors.*

– The GCG shall identify necessary skills and qualifications for Appointive Directors,¹⁰⁵ taking into consideration the unique requirements of each GOCC,¹⁰⁶ to ensure professionalism and effectiveness in corporate governance. The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees and shall form search committees to apply the same and ensure that all nominees submitted by the GCG for consideration of the President meet the Fit and Proper Rule established by the GCG and approved by the President.¹⁰⁷

To maintain the quality of the governance and management of the GOCCs, the GCG, in coordination with the relevant Government Agencies shall, subject to the approval of the President of the Philippines, prescribe, pass upon, and review the qualifications and disqualifications of individuals appointed as Appointive Directors, CEO and other Officers of a GOCC and shall disqualify those found unfit.¹⁰⁸

ART. 19. *Watchlisting.*¹⁰⁹ – To provide a central information file to be used as a reference in passing upon and reviewing the qualifications of persons nominated, elected or appointed as Appointive Directors pursuant to the Fit and Proper Rule, the GCG shall maintain a watchlist of disqualified nominees, applicants or previously appointed Directors and Officers (“Watchlist”) under the following procedures:

19.1. *Watchlist Categories:* Watchlisting shall be categorized as follows:

- (a) Disqualification File “A” (Permanent) – Directors/Officers/ employees permanently disqualified by the GCG or relevant Supervising Agency, such as the BSP, from holding a Director and/or Officer position; and
- (b) Disqualification File “B” (Temporary) – Directors and/or Officers temporarily disqualified by the GCG or relevant

¹⁰² Sec. 28, R.A. No. 10149.

¹⁰³ R.A. No. 10149 was published in the Official Gazette on 11 July 2011 and took effect fifteen (15) days thereafter, i.e., 26 July 2011.

¹⁰⁴ Sec. 31, R.A. No. 10149.

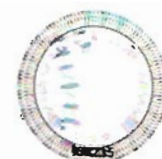
¹⁰⁵ Sec. 5(e), R.A. No. 10149.

¹⁰⁶ Sec. 15, R.A. No. 10149.

¹⁰⁷ Sec. 15, R.A. No. 10149.

¹⁰⁸ Sec. 16, R.A. No. 10149.

¹⁰⁹ Adopted from BSP Circular No. 296, s. 2001.



Supervising Agency, such as the BSP, from holding a Director and/or Officer positions.

- 19.2. *Inclusion of Directors and Officers in the Watchlist:* Upon recommendation by the Supervising Agency, the inclusion of a Director or Officer in Watchlist Disqualification Files "A" and "B", on the basis of final and executory decisions, actions or reports of the courts, banks, quasi-banks, BSP, National Bureau of Investigation (NBI), Ombudsman or any other administrative agencies shall require the prior written approval by the GCG.
- 19.3. *Notification of Directors/Officers:* Upon written approval by the GCG, the concerned Director or Officer shall be informed through registered mail, with registry return receipt card, at his/her last known address of his/her inclusion in the Watchlist of persons disqualified to be a Director or Officer in any GOCC covered by the Act.
- 19.4. *Confidentiality:* Watchlisting shall primarily be for determining the applicability of the Fit and Proper Rule for individuals who are nominees for Appointive Directors in the GOCC Sector, but may be accessed or queried upon by Supervising Agencies or regulatory authorities in pursuing their functions.
- 19.5. *Delisting:* All delistings from the Watchlist shall be approved by the GCG upon recommendation of Supervising Agencies or regulatory authorities, except in cases of persons known to be dead where delisting shall be automatic upon proof of death. Delisting from Watchlist Disqualification File "B" (Temporary), may be approved by the GCG in the following cases:
- (a) After the lapse of the specific period of disqualification;
 - (b) When the conviction by the courts or the tribunals for crimes involving dishonesty, breach of trust and/or violation of banking laws becomes final and executory, in which case the director/ officer/employee is re-listed to Watchlist Disqualification File "A" (Permanent); and
 - (c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, Supervising Agency, or the relevant regulatory agency where the concerned individual had a derogatory record.

Directors and Officers delisted from the Watchlist Disqualification File B other than those upgraded to Watchlist Disqualification File A shall be eligible for re-nomination and consideration for appointment for Appointive Director or Officer of a GOCC to which his/her qualifications fit.

ART. 20. Recommendation on the Suspension or Removal of Any Member of the Governing Board. – With due regard to the principles of due process, and without prejudice to the filing of administrative and criminal charges, the GCG and Supervising Agencies may recommend:



- (a) To the Governing Board of a GOCC, the suspension of any its member who participated by commission or omission in the approval of any act which constitutes a violation or noncompliance with the Act, this Manual, the Fit and Proper Rule, or the Code of Corporate Governance for GOCCs, for a period depending on the nature and extent of damage cause, and during which period the Director shall not be entitled to any emolument;¹¹⁰
- (b) To the President of the Philippines, the removal of any Appointive Director for any breach of fiduciary duties, or a violation of, or non-compliance with, the provisions of the Act, this Manual, the Fit and Proper Rule, or the Code of Corporate Governance for GOCCs.¹¹¹

20.1. A complaint for the suspension or removal of an Appointive Director may be brought formally through a written complaint before the GCG. Ensuring the due process is afforded the respondent Appointive Director, the GCG may pursue any of the following actions:

- (a) Dismiss the complaint outright for want of palpable merit;¹¹²
- (b) Submit a formal recommendation to the Governing Board for the removal of the respondent Appointive Director for cause; or
- (c) Indorse to the proper Government Agency, such as the Office of the Ombudsman, the pursuit of the criminal and or administrative process against the respondent Appointive Director.¹¹³

20.2. The suspension or removal of an Appointive Director who is also the CEO shall have the legal effect of suspending or removing him as CEO of the GOCC.

ART. 21. Compensation and Position Classification System (CPCS) for GOCCs. – The GCG, after conducting compensation studies, shall develop a Compensation and Position Classification System (CPCS) which shall apply to all Officers and employees of all GOCCs covered by the Act, whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.¹¹⁴

ART. 22. Compensation Comparisons and Reviews. – A compensation committee within the GCG, shall oversee the compensation policy for Appointive Directors of the GOCCs which shall be commensurate with:

¹¹⁰Sec 5(d), R.A. No.1 0149.

¹¹¹Secs. 15 and 17, R.A. No. 10149.

¹¹²Adopted from the Rules of Preliminary Investigation, Office of the Ombudsman, Admin. Order No. 7, 10 April 1990, hereinafter referred to as "Ombudsman's Rules of Preliminary Investigation."

¹¹³Adopted from the Ombudsman's Rules of Preliminary Investigation.

¹¹⁴Secs. 5(h) and 8, R.A. No. 10149



- (a) Performance measured against comparable industry benchmarks and key performance indicators; and
- (b) The responsibilities, potential liabilities and heightened responsibilities that they are expected to assume.¹¹⁵

III.

GUIDELINES IN THE PERFORMANCE MONITORING AND EVALUATION OF GOCCs¹¹⁶

ART. 23. *The State as an Informed Owner.* – The State recognizes the need to rationalize and monitor the operations of the GOCC Sector to help bring about improved performance, assure more efficient use of resources and focus their activities and priorities in a manner consistent with national objectives.¹¹⁷ The specific objectives in the National Government's monitoring of the GOCC Sector are to:

- (a) Identify improvements in the operations of GOCCs that will have positive financial impact and thereby reduce their financial dependence on the National Government;
- (b) Develop performance criteria, targets, and contracts for all GOCCs and identify financial and non-financial incentives, rewards and penalties;
- (c) Strengthen the financial performance review and monitoring of GOCCs, and improve the GCG's databank for the GOCC Sector;
- (d) Develop the framework that will provide the mandate and purpose of the GOCCs, financial discipline among GOCCs, and a more effective and efficient delivery of goods and services to the public, depending on the specific mandates of these GOCCs;
- (e) Enhance public accountability in the operations of GOCCs;
- (f) Promote efficient allocation and use of resources; and
- (g) Integrate and harmonize the plans and programs of all GOCCs with the overall plans and programs of the National Government.

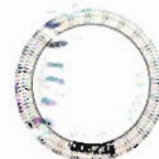
ART. 24. *Evaluation of the Performance and Determination of the Relevance of GOCCs.* – The GCG is mandated to evaluate the performance of GOCCs and determine if they should be reorganized, streamlined, abolished or privatized, in consultation with the Supervising Agency to which a GOCC is attached.¹¹⁸ In performing such mandate, the GCG shall be governed by the following standards:

¹¹⁵Sec. 8, R.A. No. 10149.

¹¹⁶Adopted from the ADB Proposed Manual

¹¹⁷Adopted from the *whereas* clause of Pres. Proc. No. 50, dated 08 December 1986

¹¹⁸Sec. 5(a), R.A. No. 10149.



- (a) The functions or purposes for which the GOCC was created are no longer relevant to the State or consistent with the national development policy of the State;¹¹⁹
- (b) The GOCC's functions or purposes duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;¹²⁰
- (c) The GOCC is not producing desired outcomes, or no longer achieving the objectives, and purposes for which it was originally designed and implemented and/ or are not cost efficient and does not generate the level of social, physical and economic returns vis-à-vis the resource inputs;¹²¹
- (d) The GOCC is dormant or non-operational;
- (e) The GOCC is involved in an activity best carried out by the private sector; or
- (f) The functions, purpose or nature of operations of any group of GOCCs require consolidation under a holding company.

ART. 25. Determination of the Performance Objectives and Targets of GOCCs. – The GCG, in consultation with the GOCCs and their Supervising Agencies, shall review the functions of each GOCC, identify its objectives, provide technical advice and assistance to the Supervising Agencies to which the GOCCs are attached in setting performance objectives and targets,¹²² coordinate and monitor operations of GOCCs, ensuring alignment and consistency with the national development policies and programs, which shall include:

- (a) Reviewing the Strategy Maps and Performance Scorecards of all GOCCs covered by the Act;
- (b) Reviewing and assessing existing performance-related policies, including the compensation/remuneration of Appointive Directors and Officers and recommend appropriate revisions and actions; and
- (c) Preparing performance reports of the GOCCs for submission to the President.¹²³

ART. 26. Periodic Review of the Functions of GOCCs. – The GCG shall also periodically review the functions of each GOCC and determine whether there is a conflict between the GOCC's regulatory and commercial functions. In cases of conflict, the GOCC's commercial operations may be recommended for privatization and its regulatory functions transferred to the appropriate government agency. Other plans of action may also be pursued to ensure that

¹¹⁹ Sec 5(a)(1), R.A. No. 10149.

¹²⁰ Sec. 5(a)(2), R.A. No. 10149.

¹²¹ Sec. 5(a)(3), R.A. No. 10149.

¹²² Sec. 5(i), R.A. No. 10149.

¹²³ Sec. 5(j), R.A. No. 10149.



the commercial functions of the GOCC do not conflict with its regulatory functions.¹²⁴

ART. 27. Establishment of the Performance Evaluation System. – The GCG shall establish the Performance Evaluation System (PES) for GOCCs and shall issue the relevant implementing guidelines for the phased implementation of the system to all GOCCs covered by the Act. The following shall be the elements of the PES:

27.1. *Performance Agreements* – Performance Agreements shall be entered into for each fiscal year between the GOCC, as represented by its Board of Directors, and the State, as represented by the GCG. Such agreements shall be the product of negotiations or discussions between the GOCC and the GCG. The components of the Performance Agreement shall include the following:

- (a) *Charter Statement and Strategy Map of the GOCC* – The GOCC shall specify its vision and mission which underlie the performance criteria, targets and weights to be set out in the Performance Agreement. It shall also define its major objectives and action plans for the fiscal year, which shall define the short-to long-term, goals of the GOCC. The GOCC shall ensure that these declarations are consistent with those submitted to other Government Agencies.
- (b) *Performance Criteria* – As the indicators to be used to evaluate GOCC accomplishments, Performance Criteria shall be developed along the following basic guidelines:
 - (i) Each Performance Criterion should measure the significant outcomes, not processes, from the operations of the GOCC. The set of criteria should hence be neither too few in number or numerous so as not to make the evaluation simplistic or overly tedious. The GCG may prescribe specific categories of criteria, *i.e.*, financial, operational, etc., to enable uniformity or comparability for certain sectors of GOCCs;
 - (ii) Generally accepted or industry-wide performance criteria, as practiced locally or internationally, may be used;
 - (iii) Performance Criteria should measure outcomes that are controllable by the GOCC management to make them fair. These should also be clearly defined, not redundant with each other, and measurable from data readily available and verifiable within the GOCC; and
 - (iv) Performance Criteria should be consistent with the Performance Measures and Major Final Outputs based on the OPIF submitted to the DBM as part of the annual Corporate Budget Call.

¹²⁴Sec. 5(l), R.A. No. 10149.



- (c) *Performance Targets* – Performance Targets are the criterion values defining the levels of achievement for each criterion. The targets shall be specified over a scale to be set by the GCG, e.g. a scale from 1 to 5 defined as 1 for Poor, 2 for Good, 3 for Satisfactory, 4 for Very Satisfactory and 5 for Outstanding. The following guidelines apply to setting Performance Targets:
- (i) The targets should be clearly defined, realistic and growth-oriented from the previous year. It should conform with the corporate operating budget adopted by the GOCC and submitted to the DBM in compliance with the annual Corporate Budget Call. The targets shall also be consistent with the sectoral targets underlying the plans and programs of the GOCC's Supervising Agency. The targets pertaining to Performance Criteria consistent with the corporate operating budget should generally be assigned a scale of 3 or Satisfactory;
 - (ii) A reasonable range for the target should be defined based on experience or industry norm. The difference between the target values defined over the 5-point scale for each Performance Criterion should generally be uniform; and
 - (iii) The method or formula of computing the Performance Target should be included in the Performance Agreement as an annex.
- (d) *Performance Weights* – To compute the composite score or rating of a GOCC for a given fiscal year, each Performance Criterion shall be assigned a weight to correspond to its stated priority in the GOCC's Charter Statement and Strategy Map. It should also reflect its relative importance to the other Performance Criteria as negotiated between the GOCC and the GCG. The sum of all the weights must add up to one-hundred percent (100%).
- (e) *Commitments/Assistance from the Government* – This section shall define the actions requested by the GOCC to be undertaken by the State in order for the Performance Targets to be realizable. These may include approval of capital projects, tariff adjustments, loans and budgetary support.
- (f) *Others* – This may include the Action Plan of the GOCC to attain the Performance Targets, the schedule of monitoring reports to be submitted or such other stipulations to be agreed between the GOCC's Governing Board and the GCG.

27.2. *Schedules* – In implementing the PES, the GCG shall consider the various reporting and compliance schedules prescribed by the Service-Wide Agencies, such as the DBM for the annual Corporate Budget Call and approval of Corporate Operating Budgets and the DOF for the fiscal programming exercise of monitored GOCCs. To be synchronized with these Agencies, the following timetable shall govern the conduct of the PES:



- (a) *Call for PES Negotiations* – The GCG shall issue the necessary circular to the GOCCs covered by PES annually specifying the necessary forms for the PES, detailed instructions for developing PES parameters and creating the PES negotiating members from the GOCC and the GCG.
- (b) *GOCC Submission of Proposed PES Parameters* – GOCCs shall submit their proposed Performance Criteria, Targets, Weights and Commitments from the State.
- (c) *Negotiation and Submission of Performance Agreements* – The negotiation of Performance Agreements between the GOCCs and the GCG shall conclude by the date set in the GCG PES circular. Thereafter the GOCC's Board of Directors and the GCG shall ratify the Performance Agreements and the same shall be disseminated by the GCG to the President, Supervising Agencies and other concerned stakeholders.
- (d) *Submission of Monitoring Reports* – GOCCs shall submit quarterly monitoring reports during the fiscal year detailing its progress in accomplishing the targets contained in the Performance Agreement. It should also disclose problems or issues requiring resolution as needed.
- (e) *Performance Scorecard* - On the succeeding year based on the schedule to be set by GCG, GOCCs shall submit to GCG their preliminary assessment of compliance to the Performance Targets or the interim Performance Scorecard disclosing the GOCC's Breakthrough Results. Upon issuance by the Commission on Audit of its report for the GOCC, the latter shall submit to the GCG its final Performance Scorecard under the Performance Agreement. The GCG shall render its evaluation and approval of the Performance Scorecard and submit its performance evaluation report for all GOCCs covered by the PES to the President.

27.3. *Performance Incentives* – The GCG shall submit for approval by the President the implementing guidelines for the grant of incentives under the PES as part of the Compensation and Position Classification System for GOCCs.

27.4. *Institutional Arrangements* – The GOCC's Board of Directors and the GCG shall form their respective technical panels duly authorized to negotiate the Performance Agreements. Such panels may include representatives from management on the part of GOCCs and the Supervising Agency, other service-wide agencies such as NEDA, and private sector industry experts on the side of the GCG.

ART. 28. Integrated Corporate Reporting System. – To facilitate the performance monitoring of GOCCs under the PES, the GCG shall initiate and formulate an integrated corporate reporting system (ICRS) for all covered GOCCs to meet the following objectives: (a) To streamline the various corporate reports submitted by GOCCs to the GCG and Service-Wide Agencies to prevent redundancy and ensure consistency in the content of these reports and (b) To



harmonize the frequency and timing of submission of corporate reports in order to reduce the burden on GOCCs. The ICRS for GOCCs shall be managed by the GCG and shall maintain forms control and the computerization of the database.

IV.

POLICY FRAMEWORK AND SYSTEM FOR TASKING GOCCs TO UNDERTAKE NON-COMMERCIAL PROGRAMS

ART. 29. *Underlying Policy on Employing GOCCs to Undertake Non-Commercial Activities.* – In line with the State policy that “[t]he corporate form of organization through which government carries out activities is utilized judiciously,”¹²⁵ and that “[t]he operations of GOCCs are rationalized and monitored centrally in order that government assets and resources are used efficiently and the government exposure to all forms of liabilities including subsidies is warranted and incurred through prudent means,”¹²⁶ the following policies shall govern all National Government projects and activities employing GOCCs to undertake non-commercial activities (*i.e.*, the delivery of non-commercial goods and services to the public), hereinafter referred to as “Non-Commercial Program” or simply “Program”, thus:

29.1. The undertaking of Non-Commercial Programs by any of the National Government’s instrumentalities and agencies shall be based on well-thought out feasibility studies that identify particularly the intended areas or sectors in which to pursue an important function of government in ensuring equity and access, delineating clearly the intended beneficiaries, and only when they have the following:

- (a) Program objectives that are expressed in measurable terms, whether it be poverty alleviation, market access, electrification, *etc.*;
- (b) Target beneficiaries that are clearly identified, including how they are chosen or prioritized;
- (c) A Program timeframe: *e.g.*, one time, 5 years, open-ended;
- (d) A clear process for monitoring activities and outputs; and
- (e) An Impact Assessment/Evaluation (Cost-Benefit Analysis, *etc.*) of the Program.

29.2. As much as possible, all Non-Commercial Programs shall be pursued through appropriate Government Agencies, and not through the GOCC Sector, in order to ensure compliance with the State policy that the corporate form of organization through which government carries out activities is utilized judiciously.

29.3. When it becomes necessary in specific cases that a Non-Commercial Program be pursued through a targeted or designated GOCC, the primary means of engagement of the GOCC shall be

¹²⁵Sec. 2(a), R.A. No. 10149.

¹²⁶Sec. 2(b), R.A. No. 10149.



through the "Project Implementation Mode" – separate and distinctly pursued from the primary purpose and operations of the GOCC, in order to ensure that:

- (a) The primary accountability of the Governing Board of the implementing GOCC under its Charter or Articles of Incorporation, and the objectives for which the GOCC was originally infused with equity/subsidy shall remain clear, binding and for which accountability can be maintained;
- (b) The Program Funds come into the GOCC coffers separately accounted for and cannot be used nor diverted for activities of the GOCC outside of the Program;
- (c) The responsibility and accountability of the GOCC, acting through its Governing Board and its Management, for meeting the obligations of the Program shall be separately monitored and reported; and
- (d) The Program Funds, activities and results, cannot be used to hide or conceal the underperformance of the GOCC in its primary objectives and operation for which it has been originally organized by the National Government.

29.4. The employment of a GOCC to undertake Non-Commercial Programs must be shown to be one of necessity through a formal feasibility study that clearly indicates how the objectives of such Program can best be realized through the GOCC Sector:

- (a) The Program must have been conceived, planned and developed with a particular existing Societal/Developmental GOCC as the target Implementing GOCC, with a well-established record of effective project-delivery, and identifying the particular competence of the GOCC that makes it a prime candidate to be the Implementing GOCC, under the following parameters:
 - (i) All Societal/Developmental GOCCs which have failed to meet the targets and objectives of their primary franchise are disqualified from being considered as Implementing GOCCs;
 - (ii) By the nature of the importance of the respective primary franchise and the power they wield over the market, purely Regulatory GOCCs shall be disqualified from being considered as Implementing GOCCs;
 - (iii) The Program must not contravene or undermine the primary purposes for which the target GOCC has been constituted and for which it primarily operates;
 - (iv) Any Program coursed through an Implementing GOCC shall not be integrated into its primary corporate operations (*i.e.*, not to be infused as equity of, or subsidy to, the implementing GOCC), but as a separate Project, with the funds intended for the Program being handled



and accounted for by the Implementing GOCC exclusively for the Program, and not to be commingled with the general funds of the implementing GOCC; and

- (v) The Implementing GOCC may charge an administration fee against the Program Funds (which it shall report as income to its main operations), but in no case to exceed twenty percent (20%) of the total Program Funds, the intention being that the bulk of the Program fund shall be expended to achieve the non-commercial objectives of the Program and benefit as much of the intended beneficiaries as possible.

(b) If the Program requires the creation of a new GOCC:

- (i) The Program must be coursed through the GCG pursuant to Section 27 of the Act, for its review and recommendation to the President for approval before registering the new GOCC with the SEC, accompanied by:

- The proposed Articles of Incorporation and By-laws, defining its primary purpose as a Societal/ Developmental Corporation;
- The nature and amounts of the National Government infusion into its capital, and the program of subsidies that would be required; and
- A Program Map defining clearly the objectives sought to be achieved and its role in national development; metrics to measure achievement of the objectives; reportorial requirements for the proper monitoring of the results of operations, etc., with a clear delineation when the Program is deemed to have been achieved, or declared not cost-efficient and/or does not generate the level of social or developmental returns originally intended.

(c) The use of non-Societal/Developmental GOCCs (*i.e.*, Proprietary Commercial Corporation, Government Financial, Investment and Trust Institution, Corporations with Regulatory Functions) for Non-Commercial Programs shall be allowed only when it is demonstrated clearly in the submitted feasibility study that the Program objectives can be best achieved through an identified non-Developmental/Social GOCC, but always under the following parameters:

- (i) The National Government Proponent shall cooperate with the GCG and the target GOCC in evolving the Program to achieve the following objectives:
 - Validating the necessity of coursing the Program through the target GOCC and identifying the particular competence or features of the target



GOCC that necessitates its handling of the Program; with a confirmation that there is no societal/developmental GOCC existing that can handle the Program;

- Ensuring that the pursuit of the Program shall not contravene or undermine the primary purpose and operation of the target GOCC; and
 - Adopting the proper parameters under the Project Implementation Mode to ensure that it achieves the Program's main objective of delivering the non-commercial goods and/or services to the intended beneficiaries, without undermining the GOCC's primary franchise that focuses on improving productivity, efficiency, financial viability and market competitiveness, and further ensure that the pursuit of the Program does not give to the GOCC undue advantage over private sector corporations performing similar commercial activities for the public.
- (ii) The Program shall be handled by the targeted GOCC as a separate project and not to be integrated into its primary corporate operations (*i.e.*, not to be infused as equity of, or subsidy to, the implementing GOCC), with the funds intended for the Program being handled and accounted for by the implementing GOCC exclusively for the Program, and not to be commingled with the general funds of the implementing GOCC; and
- (iii) The Implementing GOCC may charge an administration fee against the Program funds (which it shall report as income to its main operations), but in no case to exceed twenty percent (20%) of the total Program funds, the intention being that the bulk of the Program fund shall be expended to achieve the non-commercial objectives of the Program and benefit as much of the intended beneficiaries as possible.
- (d) In all cases, the unused funds of Program shall be accounted for and remitted back to the National Government.
- (e) There must always be a separate accounting in the books of the Implementing GOCC for the Program, and a separate report shall be issued on an annual basis to the Supervising Agency, the GCG, the NEDA and the Grantor, and published in the GOCC's website.



V.

ADR IN THE GOCC SECTOR

ART. 30. ADR Policy. – Pursuant to Presidential Decree No. 242,¹²⁷ and the State policy embodied in Section 10, Chapter 3, Book VII of the Administrative Code of 1987,¹²⁸ to encourage amicable settlement, comprise and arbitration, and in order to expedite administrative proceedings involving conflicting rights or claims and obviate expensive litigations, every Government Agency shall, in all disputes involving GOCCs and Subsidiaries, continue to administratively settle or adjudicate such claims as provided for in existing laws, rules and regulations.

30.1. *In Cases Involving Purely Questions of Law.* – In all cases involving only questions of law, the same shall be submitted to and ruled upon by the Secretary of Justice, whose ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned, unless otherwise directed by the President of the Philippines.¹²⁹

30.2. *In Cases Involving Mixed Questions of Law and of Facts or Only Factual Issues.*¹³⁰ – In cases involving mixed questions of law and of fact, or only factual issues, they shall be submitted to and ruled upon by:

- (a) the Secretary of Justice, with respect to disputes where one of the parties is a GOCC and the other party(ies) is a Government Agency which is not a GOCC;
- (b) the Government Corporate Counsel, with respect to disputes or claims or controversies solely between or among GOCCs;

The disputes, claims or controversies shall be settled or adjudicated in accordance with the published rules of the Department of Justice or the Office of the Government Corporate Counsel, as the case may be.

30.3. Unless otherwise directed by the President of the Philippines, the final rulings or decisions rendered in the settlement or adjudication of all such disputes, claims or controversies shall have the same force and effect as final decisions of the courts of justice.

¹²⁷ Entitled "Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies Between or Among Government Offices, Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations, and For Other Purposes," dated 09 July 1973.

¹²⁸ Executive Order No. 292, s. 1987.

¹²⁹ Sec. 2, P.D. No. 242.

¹³⁰ Adopted from Sec. 3, P.D. No. 242.



VI.

MISCELLANEOUS PROVISIONS

ART. 31. Amendments. – This Manual may be amended by the GCG through the issuance of a memorandum circular duly published in the GCG's website and copy formally submitted to the UP Law Center.

ART. 32. Effectivity. – This Manual shall be effective fifteen (15) days after it is published in the GCG's website and from the date formal copy is received by the UP Law Center.

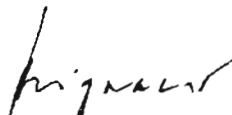
ADOPTED this ____ day of September, 2012.



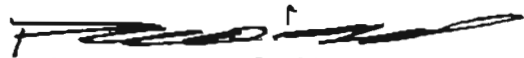
CESAR L. VILLANUEVA
Chairman



CESAR V. PURISIMA
Secretary, Department of Finance
(DOF)



MA. ANGELA E. IGNACIO
Commissioner



FLORENCIO B. ABAD
Secretary, Department of Budget and
Management (DBM)



RAINIER B. BUTALID
Commissioner

—oOo—

APPROVED / DISAPPROVED:



PRESIDENT BENIGNO S. AQUINO III

NOV 28 2012

