



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

GCG MEMORANDUM CIRCULAR NO. 2012 – 07

CODE OF CORPORATE GOVERNANCE FOR GOCCs

WHEREAS, pursuant to the State declared policy of treating Government-Owned or -Controlled Corporations (GOCCs) as significant tools for economic development, and the statutorily-mandated obligation of the State to ensure that the governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness, under governing boards which are competent to carry out their functions, fully accountable to the State as its fiduciaries and always acting for the best interests of the State, the **Governance Commission for GOCCs (GCG)**, in the exercise of its mandate under Section 5(c) of Republic Act No. 10149, approved the **CODE OF CORPORATE GOVERNANCE FOR GOCCs ("CODE")** 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 _____;

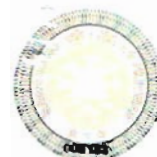
NOW, THEREFORE, the Commission hereby formally promulgates and implements the Code as follows:

I.

DEFINITIONS OF TERMS

SECTION 1. *Definition of Terms.* – For purposes of this Code, 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

"Appointive Directors" refer to: (1) in the case of Chartered GOCCs, all members of its Board of Directors/Trustees who are not *ex officio* members thereof; (2) in the case of Nonchartered GOCCs, 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 Subsidiaries and Affiliates, 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.²

"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.³

"Board Officers" refer to Officers whose primary task is to serve the Board or to pursue the immediate functions of the Board, such as the Chairman, Vice-Chairman and the Corporate Secretary.

"Board of Directors/Trustees" or "Board" or "Governing Board" ("Board") refers 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

"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 stockholders or members towards the GOCC and among themselves in reference to the management of its affairs.⁴

"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.⁵

"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.⁶

¹Sec. 3(a), R.A. No. 10149.

²Sec. 3(b), R.A. No. 10149.

³Adopted from Secs. 2 and 19, Corporation Code of the Philippines.

⁴Gokongwei, Jr. v. Securities and Exchange Commission, 89 SCRA 336 (1979).

⁵Sec. 3(3), R.A. No. 10149.

⁶Sec. 3(g), R.A. No. 10149.

"*Confidential Information*" refers to all non-public information entrusted to or obtained by a member of the Board or Officer by reason of his/her position as such with the GOCC. It includes, but is not limited to, non-public information that might be of use to competitors or harmful to the GOCC or its customers/stakeholders if disclosed, such as: (1) non-public information about the GOCC's financial condition, prospects or plans, its marketing and sales programs and research and development information, as well as information relating to mergers, acquisitions, divestitures, stock splits and similar transactions; (2) non-public information concerning possible transactions or ventures with other companies, or information about suppliers, joint venture partners, or any information that the GOCC is under obligation to keep confidential; and (3) non-public information about internal discussions, deliberations and decisions, between and among Directors and Officers.

"*Chartered GOCC*" refers to a GOCC, including a GFI, created and vested with functions by a special law.⁷

"*Director*" refers to any member of the Governing Board 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.

"*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.⁸

"*Executive Officer*" ("*Officer*") refers to the CEO or whoever is the highest ranking officer in the GOCC, and such other corporate officer of the GOCC as expressly provided for in its Charter (for a Chartered GOCC) or By-laws (for a Nonchartered GOCC), such as the Vice-President, Chief Financial Officer, Chief Investment Officer, and General Manager.⁹ As distinguished from Board Officers, Executive Officers primarily form part of the Management of the GOCC.

"*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.¹⁰

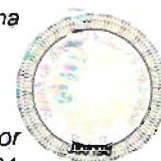
"*Fit and Proper Rule*" refers to a set of standards for determining whether a member of the Board of Directors/Trustees or the CEO is qualified to hold a position in a GOCC which shall include, but not be limited to, standards on integrity, experience, education, training and competence,

⁷Sec. 3(f), R.A. No. 10149.

⁸Sec. 3(i), R.A. No. 10149.

⁹Adopted from Sec. 2(q), R.A. No. 10149. See *Gurrea v. Lazama*, 103 Phil. 553 (1958), *Pamplona Plantation Co. v. Acosta*, 510 SCRA 249 (2006).

¹⁰Derived from Sections 19 and 21 of R.A. No. 10149.



as such standards are set forth under GCG Memorandum Circular No. 2012-05.¹¹

"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.¹²

"Government Financial Institution" ("GFI") refers to any financial institution or corporation 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* ("BSP"); 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.¹³

"Government Instrumentalities with Corporate Powers" ("GICP")/"Government Corporate Entity" ("GCE") refer to an instrumentality or agency of the government, which is neither a corporation nor an agency integrated within the departmental framework, but vested by law with special functions or jurisdictions, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a Charter.¹⁴

"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. The term includes Government Instrumentalities with Corporate Powers ("GICP"), Government Corporate Entities ("GCE") and Government Financial Institutions ("GFI"). The term also includes a Subsidiary of a GOCC.¹⁵

"Management" refers to the body given the authority to implement the policies determined by the Board in directing the course and business activities of the GOCC.¹⁶

"Material Information" ("Material Fact") refers to information which a reasonable investor, stakeholder or Supervising Agency would consider important in determining whether: (1) to buy, sell, hold or otherwise transact with the securities issued by a GOCC; or (2) to the exercise with reasonable prudence voting rights related to securities held with such GOCC, or

¹¹Sec. 3(j), R.A. No. 10149.

¹²Sec. 3(k), R.A. No. 10149.

¹³Sec. 3(m), R.A. No. 10149.

¹⁴Sec. 3(n), R.A. No. 10149.

¹⁵Sec. 3(o), R.A. No. 10149.

¹⁶Adopted from Art. 1(d), SEC Revised Code of Corporate Governance (SEC Memorandum Circular No. 06, s. 2009)



relating to corporate acts, contracts and transactions which would adversely affect the operations of the GOCC.¹⁷

"*Nonchartered GOCC*" refers to a GOCC organized and operating under Batas Pambansa Bilang 68, or "The Corporation Code of the Philippines".¹⁸

"*Non-Stock GOCC*" refers to a Chartered or Nonchartered GOCC which has no equity represented by shares of stock.

"*Officers*" refer to both Board Officers and Executive Officers.¹⁹

"*Per Diems*" refer to the compensation granted to members of Governing Boards of a GOCC for actual attendance in meetings.²⁰

"*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.²¹

"*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.²²

"*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,²³ who are in the National Government, and all other instrumentalities, agencies or branches of the Republic of the Philippines, including government-owned-or-controlled corporations, and their subsidiaries.²⁴

"*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.

"*Stock GOCC*" refers to either a Chartered or Nonchartered GOCC in which its equity or capital is represented by shares of stock.

¹⁷ Adopted from SRC Rule 3, Implementing Rules and Regulations to the Securities Regulation Code.

¹⁸ Sec. 3(p), R.A. No. 10149.

¹⁹ Sec. 3(q), R.A. No. 10149.

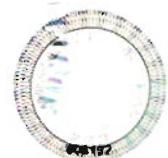
²⁰ Sec. 3(s), R.A. No. 6713.

²¹ Sec. 3(t), R.A. No. 10149.

²² Sec. 3(u), R.A. No. 10149.

²³ Sec. 3(b), R.A. No. 6713.

²⁴ Sec. 3(a), 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.²⁵

"*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.²⁶

"*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.²⁷

SEC. 2. Singular Term Include the Plural. – Unless otherwise indicated in this Code, any reference to a singular, shall apply as well to the plural, and vice versa.

SEC. 3. Coverage. – This Code shall be observed by all GOCCs, GICPs/GCEs and GFIs, including their Subsidiaries, covered by the Act.

II.

ROLE OF GOCCs IN NATIONAL DEVELOPMENT

SEC. 4. GOCCs as the State's Economic Tools for Development. – The State recognizes the potential of GOCCs as significant tools to pursue economic development, and as a means to promote growth by ensuring that their operations are consistent with national development policies and programs.²⁸

Under the Act, the State, acting through the GCG, is mandated to ensure that the:

- (a) Operations of GOCCs are rationalized and properly monitored in order that government assets and resources are used efficiently and government exposure to all forms of liabilities and subsidies is warranted and incurred through prudent means;²⁹
- (b) Governance of GOCCs is carried out in a transparent, responsible and accountable manner and with utmost degree of professionalism and effectiveness;³⁰ and
- (c) Governing Boards are competent to carry out their functions, fully accountable to the State as its fiduciary, and always acting in the best interest of the State.³¹

²⁵Sec. 3(y), R.A. No. 10149.

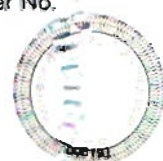
²⁶Sec. 3(z), R.A. No. 10149.

²⁷Adopted from Sec. 42, Chapter 9, Book IV, Revised Administrative Code of 1987 (Executive Order No. 292, 25 July 1987)

²⁸Adopted from Sec. 2, R.A. No. 10149.

²⁹Sec. 2(b), R.A. No. 10149.

³⁰Sec. 2(c), R.A. No. 10149.



III.

GOVERNING BOARD

SEC. 5. Board Directly Vested with Corporate Powers. – 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,³² the Governing Board is primarily responsible for the governance of the GOCC. Consequently, it is the Board and not Management, that is primarily accountable to the State for the operations and performance of the GOCC.

SEC. 6. Board Duty to Properly Select and Provide Independent Check on Management. – Concomitant with the power to elect the CEO from among their ranks and to appoint other Officers of the GOCC, it is the duty of every Governing Board to ensure that they elect and/or employ only Officers who are fit and proper to hold such offices with due regard to their qualifications, competence, experience and integrity.³³ The Board is therefore obliged to provide an independent check on Management.³⁴

SEC. 7. Mandate and Responsibility for the GOCC's Performance. – Although the day-to-day management of the affairs of the GOCC may be with Management, the Board is, however, responsible for providing policy directions, monitoring and overseeing Management actions,³⁵ as articulated in its Charter or Articles of Incorporation, and other relevant legislation, rules and regulations. These mandated functions and responsibilities include the following:

- (a) Provide the corporate leadership of the GOCC subject to the rule of law, and the objectives set by the National Government through the Supervising Agencies and the GCG;
- (b) Establish the GOCC's vision and mission, strategic objectives, policies and procedures, as well as defining the GOCC's values and standards through:
 - Charter Statements;
 - Strategy Maps; and
 - Other control mechanism mandated by best business practices;
- (c) Determine important policies that bear on the character of the GOCC to foster its long-term success, ensure its long-term viability and strength, and secure its sustained competitiveness;

³¹ Sec. 2(e), R.A. No. 10149.

³² Adopting Sec. 23, Corporation Code.

³³ Sec. 19(e), R.A. No. 10149.

³⁴ Adopted from Sec. II(2)(a), SEC Code of Corporate Governance, Memorandum Circular No. 2, s. 2002.

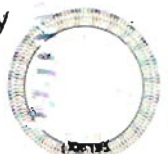
³⁵ Adopted from Sec. II(2)(a), SEC Code of Corporate Governance, Memorandum Circular No. 2, s. 2002.



- (d) Determine the organizational structure of the GOCC, defining the duties and responsibilities of its Officers and employees and adopting a compensation and benefit scheme that is consistent with the GOCC Compensation and Position Classification System (CPCS) developed by GCG and formally approved by the President of the Philippines;
- (e) Ensure that personnel selection and promotion shall be on the basis of merit and fitness and that all personnel action shall be in pursuit of the applicable laws, rules and regulations;
- (f) Provide sound written policies and strategic guidelines on the GOCC's operating budget and major capital expenditures, and prepare the annual and supplemental budgets of the GOCC;
- (g) Comply with all reportorial requirements, as required in the Charter or Articles of Incorporation and By-laws, as well as applicable laws, rules and regulations;
- (h) Formally adopt and conduct annually the mandated Performance Evaluation System (PES) and the Performance Scorecard and timely and accurate report the results to the GCG; and
- (i) Ensure the fair and equitable treatment of all Stakeholders and enhancing the GOCC's relations with its Stakeholders.

SEC. 8. *Specific Functions of the Board.* – In addition to those specified in its Charter or Articles of Incorporation and/or By-laws, the Board shall perform the following functions:

- (a) Meet regularly, ideally at least once every month, to properly discharge its responsibilities, with independent views expressed during such meetings being given due consideration, and that all such meetings shall be properly documented or minuted;
- (b) Determine the GOCC's purpose and value, as well as adopt strategies and policies, including risk management policies and programs, in order to ensure that the GOCC survives and thrives despite financial crises and that its assets and reputation are adequately protected;
- (c) Monitor and evaluate on a regular basis the implementation of corporate strategies and policies, business plans and operating budgets, as well as Management's over-all performance to ensure optimum results;
- (d) Adopt a competitive selection and promotion process, a professional development program, as well as a succession plan, to ensure that the Officers of the GOCC have the necessary motivation, integrity, competence and professionalism;



- (e) Monitor and manage potential conflicts of interest of Directors, Management, and shareholders, including misuse of corporate assets and abuse in related party transactions;
- (f) Implement a system of internal checks and balances, which may be applied in the first instance to the Board; and ensure that such systems are reviewed and updated on a regular basis;
- (g) Ensure the integrity of the GOCC's accounting and financial reporting systems, including independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards;
- (h) Identify and monitor, and provide appropriate technology and systems for the identification and monitoring of key risks and performance areas;
- (i) Adopt, implement and oversee the process of disclosure and communications;
- (j) Constitute an Audit Committee and such other specialized committees as may be necessary, or required by applicable regulations, to assist the Board in discharging its functions; and
- (k) Conduct and maintain the affairs of the GOCC within the scope of its authority, as prescribed in its Charter or Articles of Incorporation, By-laws, and applicable laws, rules and regulation.

SEC. 9. Composition of the Governing Board. – For Chartered GOCCs, the composition of their Boards shall be as provided for in their Charter. For Nonchartered GOCCs, the composition of their Boards shall be as provided for in their Articles of Incorporation and/or By-laws.³⁶

SEC. 10. Ex Officio Alternates. – *Ex Officio* Directors may designate their respective alternates, who ideally should be the officials next-in-rank to them, and whose acts shall be considered the acts of their principals.³⁷

SEC. 11. Multiple Board Seats. – The capacity of Appointive Directors to serve with diligence shall not be compromised. As such, no Appointive Director in a GOCC, Subsidiary or Affiliate may hold more than two (2) other Board seats in other GOCCs, Subsidiaries and/or Affiliates.

SEC. 12. Appointment of Appointive Directors. –

- 12.1. All Appointive Directors in GOCCs and their Subsidiaries shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.³⁸

³⁶ Sec. 13, R.A. No. 10149.

³⁷ Sec. 14, R.A. No. 10149.

³⁸ Sec. 15, R.A. No. 10149.



12.2. The selection and nomination, and shortlisting of prospective Appointive Directors shall be pursued in accordance with the rules and criteria formulated by the GCG, which shall include the following statutorily-mandated conditions, thus:

- (a) The GCG shall cause the creation of the Search Committee to pursue the process of selection, nomination and shortlisting of prospective appointees;³⁹
- (b) All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule, and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC;⁴⁰
- (c) The GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the number of Directors to be appointed;⁴¹ and
- (d) In the event that the President does not see fit to appoint any of the nominees included in the shortlist, the President shall ask the GCG to submit additional nominees.⁴²

12.3. Affiliates, not being within the definition of "GOCC", continue to be governed by their Articles of Incorporation and By-laws, and the nomination of Appointive Directors to their Boards shall remain within the business judgment prerogative of the Governing Boards of the Holding GOCCs in accordance with the guidelines set by the GCG.

In the preparation for the annual stockholders' meetings of the Affiliates at which the members of their Board are nominated and elected, the Governing Boards of the Holding GOCCs shall, through formal board resolutions, nominate candidates for the Appointive Directors for each Affiliate whom the Holding GOCC is entitled to nominate to the extent of its percentage shareholdings in such Affiliates.

SEC. 13. *Fit and Proper.* – All members of the Board, the CEO and other Officers of the GOCCs including Appointive Directors in Subsidiaries and Affiliates shall be qualified by the Fit and Proper Rule adopted by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached, and approved by the President,⁴³ and shall include by reference the qualifications expressly provided for in the Charters or By-laws of the GOCCs.

To maintain the quality of management of the GOCCs, the GCG, in coordination with the Supervising Agencies shall, subject to the approval of the President, prescribe, pass upon and review the qualifications and

³⁹Sec. 15, R.A. No. 10149.

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

⁴³Sec. 16, R.A. No. 10149.



disqualifications of individuals appointed as Directors, CEO and other Executive Officers and shall disqualify those found unfit.⁴⁴

In determining whether an individual is fit and proper to hold the position of an Appointive Director, CEO or Officer of the GOCC, due regard shall be given to one's integrity, experience, education, training and competence.⁴⁵

SEC. 14. Term of Office of Appointive Directors. – Pursuant to Section 17 of the Act, any provision in the Charters, Articles of Incorporation and/or By-laws of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause: *Provided, however,* That each Appointive Director shall continue to hold office until the successor is appointed and qualified.⁴⁶

14.1. By virtue of the provisions of Section 17 of the Act providing that “Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a term of office until June 30, 2011, unless sooner replaced by the President,”⁴⁷ and notwithstanding any provision in the Charter, Articles of Incorporation and/or By-laws to the contrary, the one (1) year Term of Office of all Appointive Directors in all GOCCs covered by the Act shall begin on 01 July of the year of appointment and ending on 30 June of the following year.

14.2. An Appointive Director may be nominated by the GCG for re-appointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors adopted for the GOCC.⁴⁸

14.3. Appointment to any vacancy shall only be for the unexpired term of the predecessor. The appointment of a Director to fill such vacancy shall be in accordance with the manner provided for regular nomination, shortlisting and appointment of Appointive Directors.⁴⁹

SEC. 15. Board Officers. – The Board Officers of a GOCC are the Chairman of the Board (who is the highest ranking of the Board Officers), the Vice-Chairman, the Corporate Secretary, and the Compliance Officer, who must all be Filipino citizens. Nonchartered GOCCs are hereby mandated to amend their respective By-laws to provide for the creation and appointment of such Board offices.

15.1. *Chairman of the Board.* – Ideally, the roles of the Chairman and the CEO should be with different individuals in order to ensure an appropriate balance of power, increased accountability, greater

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Sec. 17, R.A. No. 10149.

⁴⁷ See last paragraph of Sec. 17, R.A. No. 10149.

⁴⁸ *Id.*

⁴⁹ *Id.*



capacity of the Board for independent decision-making, and optimum capacity to exercise supervisory function over Management.

Where both positions of the Chairman and the CEO are unified in the same individual, checks and balances should be clearly provided by the Governing Board to help ensure that independent, outside views, perspectives, and judgments are given proper hearing in the Board.

The Chairman shall, when present, preside at all meetings of the Board. The Chairman's responsibilities may include:

- (a) Calling meetings to enable the Board to perform its duties and responsibilities;
- (b) Approving meeting agenda in consultation with the CEO and the Corporate Secretary;
- (c) Exercising control over quality, quantity and timeliness of the flow of information between Management and the Board; and
- (d) Assisting in ensuring compliance with the GOCC's guidelines on corporate governance.

The responsibilities set out above, may pertain only to the Chairman's role in respect to the Board proceedings, and shall not be taken as a comprehensive list of all the duties and responsibilities of a Chairman.

For legal purposes, the Chairman of the Governing Board shall be considered as the "Head of Agency" of the GOCC.

15.2. *Vice-Chairman.* – In the absence of the Chairman of the Board, the Vice-Chairman shall preside at the meetings of the Board.

15.3. *Corporate Secretary.* – The Corporate Secretary need not be a member of the Governing Board. Ideally, the Corporate Secretary must possess organizational and interpersonal skills, and the legal skills of a Chief Legal Officer. The Corporate Secretary shall have the following functions:

- (a) Serve as an adviser to the Board Members on their responsibilities and obligations;
- (b) Keep the minutes of meetings of the shareholders, the Board, the Executive Committee, and all other committees in a book or books kept for that purpose, and furnish copies thereof to the Chairman, the CEO and other members of the Board as appropriate;
- (c) Keep in safe custody the seal of the GOCC and affix it to any instrument requiring the same;
- (d) For stock GOCCs, have charge of the stock certificate book and such other books and papers as the Board may direct;
- (e) Attend to the giving and serving of notices of Board and shareholder meetings, if applicable;

- (f) Be fully informed and be part of the scheduling process of other activities of the Board;
- (g) Receive instructions from the Chairman on the preparation of an annual schedule, the calling of Board meetings, the preparation of regular agenda for meetings, and notifying the Board of such agenda at every meeting;
- (h) Oversee the adequate flow of information to the Board prior to meetings; and
- (i) Ensure fulfillment of disclosure requirements to regulatory bodies.

The Corporate Secretary shall have such other responsibilities as the Board may impose upon him. The Board shall have separate and independent access to the Corporate Secretary.

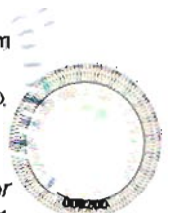
15.4. *Compliance Officer.* – The Board shall appoint a Compliance Officer who shall report directly to the Chairman. In the absence of such office or appointment, the Corporate Secretary, who is preferably a lawyer, shall act as Compliance Officer.⁵⁰ The Compliance Officer shall perform the following duties:⁵¹

- (a) Monitor compliance by the GOCC of the requirements under the Act, this Code, the rules and regulations of the appropriate Government Agencies and, if any violations are found, report the matter to the Board and recommend the imposition of appropriate disciplinary action on the responsible parties and the adoption of measures to prevent a repetition of the violation;
- (b) Appear before the GCG when summoned in relation to compliance with this Code or other compliance issues; and
- (c) Issue a certification every 30 May of the year on the extent of the GOCC's compliance with the government corporate standards governing GOCCs for the period beginning 01 July of the immediately preceding calendar year and, if there are any deviations, explain the reason for such deviation.

The appointment of a Compliance Officer shall not relieve the Governing Board of its primary responsibility vis-à-vis the State, acting through the GCG, to ensure that the GOCC has complied with all its reportorial, monitoring and compliance obligations.

⁵⁰ Adopted from Art. 3(F)(2)(m), SEC Revised Code of Corporate Governance (SEC Memorandum Circular No. 6, s. 2009).

⁵¹ Adopted from Art. 3(M), SEC Revised Code of Corporate Governance (SEC Memorandum Circular No. 6, s. 2009).



SEC. 16. Board Committees. – The creation of Board Committees and other such oversight bodies enables the members of the Governing Board to efficiently manage their time and ensure the proper understanding and resolution of all issues affecting the GOCC and the proper handling of all other concerns, and allows the Board to effectively utilize the expertise of its Directors.

16.1. The Governing Boards of GOCCs shall therefore constitute the proper committees to assist them in performing their duties and responsibilities,⁵² providing each of the committees with written terms of reference defining the duties, authorities and the composition of the committees constituted. The committees shall report to the entire Board as a collegial body and the minutes of their meetings shall be circulated to all members of the Board.⁵³ The existence of the committees shall not excuse the Board of Directors/Trustees of its collective responsibility for all matters that are within the primary responsibility and accountability of the Board.⁵⁴

16.2. As a minimum, the Board shall be supported by the following specialized committees:

16.2.1. *Executive Committee.* – Depending on the size of the Governing Board, it may constitute an Executive Committee composed of not less than three (3) members of the Board, with the Chairman of the Board being the Committee Chairman.

The Executive Committee, in accordance with the authority granted by the Board, or during the absence of the Board, shall act by a vote of at least two-thirds (2/3) of its members on such specific matters within the competence of the Board as may from time to time be delegated to the Executive Committee in accordance with the GOCC's Charter or By-Laws, except with respect to:⁵⁵

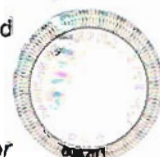
- (a) Approval of any action for which shareholders' approval is also required;
- (b) Filling of vacancies on the Board or in the Executive Committee;
- (c) Amendment or repeal of By-Laws or the adoption of new By-Laws;
- (d) Amendment or repeal of any resolution of the Board which by its express terms cannot be amended or subject to repeal;
- (e) Distribution of cash dividends; and

⁵²See OECD Guidelines – Annotations to "The Responsibilities of the Boards of State-Owned Enterprises," p. 52.

⁵³*Id.*

⁵⁴See OECD Guidelines – Annotations to "The Responsibilities of the Boards of State-Owned Enterprises," p. 52.

⁵⁵See Sec. 35, Corporation Code of the Philippines.



- (f) Exercise of powers delegated by the Board exclusively to other committees.

16.2.2. *Audit Committee.* – The Audit Committee shall consist of at least three (3) Directors, whose Chairman should have audit, accounting or finance background. The Committee shall be responsible for the following:⁵⁶

- (a) Overseeing, monitoring and evaluating the adequacy and effectiveness of the GOCC's internal control system, engage and provide oversight of the GOCC's internal and external auditors, and coordinate with the Commission on Audit (COA);
- (b) Reviewing and approving audit scope and frequency, the annual internal audit plan, quarterly, semi-annual and annual financial statements before submission to the Board, focusing on changes in accounting policies and practices, major judgmental areas, significant adjustments resulting from the audit, going concern assumptions, compliance with accounting standards, and compliance with tax, legal, regulatory and COA requirements;
- (c) Receiving and reviewing reports of internal and external auditors and regulatory agencies, and ensuring that Management is taking appropriate corrective actions, in a timely manner in addressing control and compliance functions with regulatory agencies;
- (d) Ensuring that internal auditors have free and full access to all the GOCC's records, properties and personnel relevant to and required by its function and that the internal audit activity shall be free from interference in determining its scope, performing its work and communicating its results; and
- (e) Developing a transparent financial management system that will ensure the integrity of internal control activities throughout the GOCC through a procedures and policies handbook that will be used by the entire organization.

16.2.3. *Governance Committee.* – The Governance Committee shall assist the Board of Directors in fulfilling its corporate governance responsibilities. The Committee shall be composed of at least three (3) members of Board, and chaired by the Chairman of the Board. The Committee shall be responsible for the following:

⁵⁶ Adopted from Sec. 9(A), SEC Memorandum Circular No. 2, s. 2002.



- (a) Overseeing the periodic performance evaluation of the Board and its committees and Management; and also conducting an annual self-evaluation of their performance;
- (b) Deciding whether or not a Director is able to and has been adequately carrying out his/her duties as director bearing in mind the director's contribution and performance (e.g., competence, candor, attendance, preparedness and participation). Internal guidelines shall be adopted that address the competing time commitments that are faced when directors serve on multiple boards;
- (c) Recommending to the Board regarding the continuing education of Directors, assignment to Board Committees, succession plan for the Executive Officers, and their remuneration commensurate with corporate and individual performance; and
- (d) Recommending the manner by which the Board's performance may be evaluated and proposing an objective performance criteria to be approved by the Board. Such performance indicators shall address how the Board will enhance long-term shareholder value.

16.2.4. *Nomination and Remunerations Committee*.⁵⁷ – The Nomination and Remunerations Committee shall consist of at least three (3) members of the Board. The Committee shall be responsible for the following:

- (a) Installing and maintaining a process to ensure that Officers to be nominated or appointed shall have the qualifications and none of the disqualifications mandated under the law, rules and regulations;
- (b) Reviewing and evaluating the qualifications of all persons nominated to positions in the GOCC which require appointment by the Board;
- (c) Recommending to the GCG nominees for the shortlist in line with the GOCC's and its subsidiaries' Board composition and succession plan; and
- (d) Developing recommendations to the GCG for updating the CPCS and ensuring that the same continues to be consistent with the GOCC's culture, strategy, control environment, as well as the pertinent laws, rules and regulations.

⁵⁷ Adopted from Sec. 9(B)(b), SEC Memorandum Circular No. 2, s. 2002.



16.2.5. *Risk Management Committee.* – The Risk Management Committee shall consist of at least three (3) members, with at least one member having a background in finance and investments. The Risk Management Committee shall be responsible for the following:

- (a) Performing oversight risk management functions specifically in the areas of managing credit, market, liquidity, operational, legal, reputational and other risks of the GOCC, and crisis management, which shall include receiving from Senior Management periodic information on risk exposures and risk management activities;
- (b) Developing the Risk Management Policy of the GOCC, ensuring compliance with the same and ensure that the risk management process and compliance are embedded throughout the operations of the GOCC, especially at the Board and Management level; and
- (c) Providing quarterly reporting and updating the Board on key risk management issues as well as *ad hoc* reporting and evaluation on investment proposals;

16.3. *Combining the Mandatory Committees.* – Nothing herein shall preclude the Governing Board from formally combining the functions of the committees into such combinations that will best serve the interest of the GOCC.

16.4. *Other Committees Required by Law, Rules and Regulations.* – In addition to the committees required in this Code, each GOCC, when so covered, shall also establish the committees required under the corresponding and applicable rules and regulations issued by the Bangko Sentral ng Pilipinas (BSP), the Insurance Commission (IC), the Securities and Exchange Commission (SEC) and the Philippine Stock Exchange (PSE), and other Supervising Agencies.

SEC. 17. *Annual Performance Evaluation of the Board.* – A systematic evaluation process of the Board shall be developed as a necessary tool in enhancing its professionalism and as a useful incentive for Board Members to devote sufficient time and effort to their duties. The evaluation should also be instrumental in developing effective and appropriate induction and training programs for new and existing members of the Board.

IV.

MANAGEMENT

SEC. 18. *Role of Management.* – The Management of every GOCC stands as the center of decision-making for the day-to-day affairs of the GOCC. It determines the GOCC's activities by putting the targets set by the Board in concrete terms and by implementing basic strategies for achieving those targets.

Management is responsible to the Board for implementing the infrastructure for the GOCC's success through the following mechanisms in its organization as set by the Board: organizational structures that work effectively and efficiently in attaining the goals of the GOCC; useful planning, control, and risk management systems that assess risks on an integrated cross-functional approach; information systems that are defined and aligned with an information technology strategy and the business goals of the GOCC; and a plan of succession that formalizes the process of identifying, training and selection of successors in key positions in the GOCC.

SEC. 19. *Management Primarily Accountable to the Board.* – Management is primarily accountable to the Board for the operations of the GOCC. As part of its accountability, Management shall provide all members of the Board with a balanced and understandable account of the GOCC's performance, position and prospects on a monthly basis. This responsibility shall extend to interim and other price sensitive public reports and reports to regulators.

SEC. 20. *Chief Executive Officer (CEO).* – The CEO or the highest-ranking Executive Officer provided for in the Charter or By-laws, shall be elected annually by the members of the Board from among its ranks.⁵⁸ The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.⁵⁹ In addition to the duties imposed on him by the Board, the CEO shall:

- (a) Exercise general supervision and authority over the regular course of business, affairs, and property of the GOCC, and over its employees and officers;
- (b) See to it that all orders and resolutions of the Board are carried into effect;
- (c) Submit to the Board as soon as possible after the close of each fiscal year, and to the shareholders at the annual meeting, if applicable, a complete report of the operations of the GOCC for the preceding year, and the state of its affairs;
- (d) Report to the Board from time to time all matters which the interest of the GOCC may require to be brought to its notice; and
- (e) Perform such other duties and responsibilities as the Board may impose upon him.

⁵⁸Sec. 18, R.A. No. 10149.

⁵⁹*Id.*

SEC. 21. Other Executive Officers. – Subject to the provisions of its Charter or By-Laws, the Executive Officers shall be appointed by the Board.

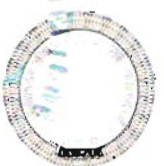
21.1. Corporate Treasurer. – The Treasurer shall have charge of the funds, securities, receipts and disbursements of the GOCC. Unless otherwise provided in the Charter or the By-laws, the Treasurer shall also have the following functions:

- (a) Deposit or cause to be deposited all monies and other valuable effects in the name and to the credit of the GOCC in compliance with applicable laws, rules and regulations;
- (b) Regularly and at least quarterly render to the CEO or to the Board an account of the fund condition of funds of the GOCC and all of his transactions as such;
- (c) Ensure fund availability on a timely basis and at the most economical means;
- (d) Optimize yields in temporary excess funds, but at the same time ensure the implementation of appropriate risk management measures over its resources;
- (e) Provide relevant and timely financial market information;
- (f) Perform such other responsibilities as the Board may impose.

21.2 Chief Finance Officer (CFO). – The CFO, who may also be the Treasurer, shall be responsible for the following:

- (a) Providing management with accurate, relevant, and timely operating and financial reports and analysis necessary for financial planning and strategy formulation, and monitoring actual implementation of budgets, plans and programs towards the achievement of corporate goals;
- (b) Maintaining the integrity of accounting records as the basis of the financial statements and reports provided to Management for decision making and to government regulatory bodies in compliance with statutory requirements;
- (c) Promoting investor and public confidence in the GOCC by addressing the various information requirements of the investing public and ensuring that all other legal reportorial obligations to the concerned agencies are complied with;
- (d) Strengthening internal controls by monitoring compliance with policies and recommending to Management appropriate actions and changes in systems and procedures in the exigencies of the service; and
- (e) Performing such other responsibilities as the Board may impose.

SEC. 22. Power of the Governing Board to Discipline/Remove Officers. – Subject to existing civil service laws, rules and regulations, and in ensuring



compliance with the requirements of due process, the Board shall have the authority to discipline, or remove from office, the CEO, or any other Officer, upon a majority vote of the members of the Board who actually took part in the investigation and deliberation.⁶⁰

V.

DUTIES AND OBLIGATIONS OF DIRECTORS AND OFFICERS

SEC. 23. *Fiduciaries of the State.* – Directors and Officers are fiduciaries of the State in that: (a) they have the legal obligation and duty to always act in the best interest of the GOCC, with utmost good faith in all dealings with the properties, interests and monies of the GOCC;⁶¹ and (b) they are constituted as trustees in relation to the properties, interests and monies of the GOCC.⁶²

SEC. 24. *Directors and Officers as Public Officials.* – Directors and Officers are also Public Officials as defined by, and are therefore covered by the provisions of the "Code of Conduct and Ethical Standards for Public Officials and Employees,"⁶³ with its declared policies: (a) to promote a high standard of ethics in public service; and (b) Public Officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.⁶⁴

SEC. 25. *Respect for and Obedience to the Constitution and the Law.* – As Public Officials, a Director or Officer shall respect and obey the Constitution, and shall comply, and cause the GOCC to faithfully and timely comply, with all legal provisions, rules and regulations, and corporate governance standards, applicable to them and to the GOCC in which they serve, and to act within the bounds of their Charter, Articles of Incorporation and By-laws.

SEC. 26. *Duty of Diligence.* – The fiduciary duty of diligence of Directors and Officers to 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, includes the obligation to:

- (a) Exercise extraordinary diligence, skill and utmost good faith in the conduct of the business and in dealing with the properties of the GOCC, using the utmost diligence of a very cautious person with due regard to all the circumstances;⁶⁵
- (b) Apply sound business principles to ensure the financial soundness of the GOCC;⁶⁶ and

⁶⁰Sec. 22, R.A. No. 10149.

⁶¹Opening paragraph of Sec. 19, R.A. No. 10149.

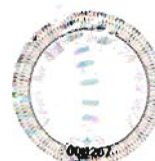
⁶²Sec. 20, R.A. No. 10149.

⁶³Rep. Act No. 6713.

⁶⁴Sec. 2, R.A. No. 6713.

⁶⁵Sec. 19(b) combined with Sec. 21, R.A. No. 10149.

⁶⁶Sec. 19(d), R.A. No. 10149.



- (c) Elect and/or employ only Officers who are fit and proper to hold such office with due regard to the qualifications, competence, experience and integrity.”⁶⁷

Every Director or Officer, by the act of accepting such position in the GOCC, affirms and agrees: (1) to have a working knowledge of the statutory and regulatory requirements affecting the GOCC he is to serve, including the contents of its Charter, or Articles of Incorporation and By-laws, the requirements of the GCG, and where applicable, the requirements of other Supervising Agencies; and (2) to always keep himself informed of industry developments and business trends in order to safeguard the GOCC's interests and preserve its competitiveness.

SEC. 27. Duty of Loyalty. – The fiduciary duty of loyalty of Directors and Officers to 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, includes the obligation to:

- (a) Act with utmost and undivided loyalty to the GOCC;⁶⁸
- (b) Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;⁶⁹ and
- (c) Avoid (1) taking for themselves opportunities related to the GOCC's business; (2) using the GOCC's property, information or position for personal gain; or (3) competing with the GOCC's business opportunities.

27.1. Avoid Conflict of Interest. – Directors and Officers shall at all times avoid any actual or potential conflict of interest with the GOCC. Each shall also avoid any conduct, or situation, which could reasonably be construed as creating an appearance of a conflict of interest.

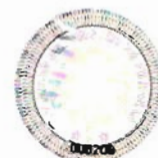
Any question about a Director's or Officer's actual or potential conflict of interest with the GOCC shall be brought promptly to the attention of the Chairman of the Board, who will review the question and determine an appropriate course of action.

27.2. Trustee Relation to GOCC Properties, Interests and Monies. – Except for the *per diem* received for actual attendance in board meetings and the reimbursement for actual and reasonable expenses and incentives as authorized by the GCG, any and all realized and unrealized profits and/or benefits including, but not limited to, the share in the profits, incentives of Directors or Officers in excess of that authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where the GOCC is a stockholder or investor, and any benefit from the performance of Directors or Officers acting for and in behalf of the GOCC in dealing with its properties, investments in other corporations, management of

⁶⁷ Sec. 19(e), R.A. No. 10149.

⁶⁸ Sec. 19(a), R.A. No. 10149.

⁶⁹ Sec. 19(c), R.A. No. 10149.



Subsidiaries and other interest, are to be held in trust by such Director or Officer for the exclusive benefit of the GOCC represented.⁷⁰

27.3. *Taking of Corporate Opportunities.* – Where a Director or an Officer, by reason of his being a member of the Board or an Officer of a GOCC, acquires or receives for himself/herself a benefit or profit of whatever kind or nature, including but not limited to, the acquisition of shares in corporations where such GOCC has an interest, the use the properties of the GOCC for his/her own benefit, the receipt of commission(s) on contract(s) with the GOCC or its assets, or the taking advantage of corporate opportunities of the GOCC, all such profits or benefits shall be subject to restitution pursuant to Section 24 of the Act, without prejudice to any administrative, civil or criminal action against members of the such Director or Officer. The remedy of restitution shall apply notwithstanding the fact that such Director or Officer risked his/her own funds in the venture.⁷¹

27.4. *Restitution.* – Pursuant to Section 24 of the Act, upon the determination and report of the Commission on Audit (COA) pursuant to a Notice of Disallowance which has become final and executory, that properties or monies belonging to the GOCC are in the possession of a Director or Officer of a GOCC without authority, or that profits are earned by the Director or Officer in violation of his/her fiduciary duty, or the aggregate *per diems*, allowances and incentives received in a particular year are in excess of the limits provided under the Act, the Director or Officer receiving such properties or monies shall immediately return the same to the GOCC.

Failure by a Director or Officer to make the restitution within thirty (30) days after a written demand has been served shall, after trial and final judgment, subject such Director or Officer to the punishment of imprisonment for one (1) year and a fine equivalent to twice the amount to be restituted and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.⁷²

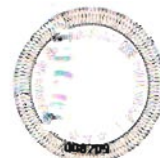
SEC. 28. Limits to Compensation, Per Diems, Allowances and Incentives. – Pursuant to Section 23 of the Act:

- (a) The Charters or By-laws of the GOCCs to the contrary notwithstanding, the compensation, *per diems*, allowances and incentives of the Appointive Directors shall be determined by the GCG, using as a reference, among others, Executive Order No. 24, dated February 10, 2011;
- (b) Directors shall not be entitled to retirement benefits acting as such directors; and

⁷⁰ Sec. 20 of R.A. No. 10149.

⁷¹ Last paragraph of Sec. 19, R.A. No. 10149.

⁷² Art. 24, R.A. No. 10149.



- (c) With respect to GOCCs organized solely for the promotion of social welfare and the common good, without regard to profit, the total yearly *per diems* and incentives in the aggregate which the Directors may receive shall be determined by the President upon the recommendation of the GCG based on the achievement by such GOCC of its performance target(s).

SEC. 29. No Gift Policy. – A Director or Officer shall not solicit, nor accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value (“Gift”) from any person where such Gift:

- (a) Would be illegal or in violation of law;
- (b) Is part of an attempt or agreement to do anything in return;
- (c) Has a value beyond what is normal and customary in the GOCCs business;
- (d) Is being made to influence the member of Board's, or Officer's, actions as such; or
- (e) Could create the appearance of a conflict of interest.

Every Governing Board shall formally adopt a “No Gift Policy” within the GOCC and ensure its full advertisement to the community and its strict implementation by particular set of rules.

SEC. 30. Duty of Confidentiality. – Pursuant to their duties of diligence and loyalty, a member of the Board or an Officer shall not use or divulge confidential or classified information officially made known to them by reason of their office and not made available to the public, either: (1) to further their private interests, or give undue advantage to anyone; or (2) which may prejudice the public interest.

VI.

OBLIGATIONS OF THE GOCC TO DIRECTORS AND OFFICERS

SEC. 31. Providing for Staff Support to Directors. – Each GOCC shall provide the members of its Governing Board with reasonable support staff and office facilities to allow them to properly discharge their duties and responsibilities.

SEC. 32. Obtaining of Directors and Officers Liability Insurance (DOLI). – Having imposed the highest level of responsibility and accountability on the members of the Board and Officers, *i.e.*, that of extraordinary diligence, it is equitable that when the GOCC itself and/or the members of the Board and Management are sued before tribunals on matters that are within the official functions and capacity and on matters where business judgment has been exercised in good faith, that there be proper recovery of the costs of litigation and the judgment liability imposed. It is prudent measure therefore for every GOCC to



obtain "Directors and Officers Liability Insurance" (DOLI) coverage for itself and the members of the Governing Board and Officers against contingent claims and liabilities that may arise from, as well as the expenses that may be incurred in prosecuting, the actions that may be filed against the GOCC arising from the actions of the Governing Board and/or Management that may cause loss or damage to third parties.

Nothing in this section shall be construed as to authorize the reimbursement or the incurring of costs, such as the payment of premiums on DOLI coverage, by the GOCC on the litigation expenses incurred and the judgment liability decreed against a Director or Officer for breach of any of his fiduciary duties or for fraud committed in the performance of his or her duties to the GOCC and/or its stakeholders.

VII.

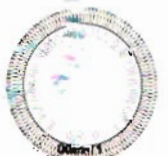
CSR AND RELATIONS WITH STAKEHOLDERS

SEC. 33. *Duty to Be Responsive to Stakeholders.* – Every Director and Officer accepts the position fully aware that he assumes certain responsibilities not only to the GOCC and its stockholders, but also with different constituencies or Stakeholders, who have the right to expect that the GOCC is being run in a prudent manner and with due regard to the interests of all Stakeholders.⁷³ Consequently, members of the Board and Officers shall deal fairly with the GOCC's employees, customers, suppliers and other Stakeholders. No member of the Board or Officer may take unfair advantage of the GOCC's employees, customers, suppliers and other Stakeholders through manipulation, concealment, abuse of confidential or privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

SEC. 34. *CSR Principles.* – As an integral part of the National Government, GOCCs are inherently mandated to be socially responsible, to act and operate as good corporate citizens. The Governing Board shall recognize and perform the obligations the GOCC has towards the National Government, its majority stockholder, as well as the minority stockholders when existing, together with the employees, suppliers, customers and other Stakeholders, and the communities in which it operates.

The Directors, Officers and all its employees are required to abide by ethical policies as mandated by the GCG. The protection of the reputation and goodwill of every GOCC is of fundamental importance, and Directors, Officers and employees should be aware of the disciplinary implications of breaches of policy.

⁷³ Taken from Sec. II(2)(a), SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002.



Every member of the GOCC is encouraged to promptly report any potentially illegal, improper and/or unethical conduct that they become aware of at their workplace or in connection with their work. Every GOCC should have an environment that enables its people to raise genuine and legitimate concerns internally. However, in the event that the people of the GOCC, and/or the stockholders believe their reporting to management may result in harassment, or undue distress, they may contact the GCG support to report such matters. The GCG provides for an opportunity for concerns to be investigated and ensures appropriate action is taken to resolve the matter effectively.

SEC. 35. *Formal Recognition of the Stakeholders.* – Every GOCC Board shall, as an integral part of its Charter Statement and embodied in its Manual of Corporate Governance, identify and formally recognize the GOCC's major and other Stakeholders, identify the nature of their interests, provide a hierarchy system of their conflicting interest in the GOCC, and providing a clear policy on communicating or relating with Stakeholders accurately, effectively and sufficiently, together with a system of properly rendering an accounting on how the GOCC has served their legitimate interests.⁷⁴

SEC. 36. *Employees.* – Every employee in a GOCC is encouraged to –

- (a) Remember that the biggest stakeholder is the Government;
- (b) Share the vision of the GOCC;
- (c) Be accountable to the public;
- (d) Listen and learn from his/her co-employees;
- (e) Think and act as a team;
- (f) Focus on the customers and strive for customer satisfaction;
- (g) Respect others;
- (h) Communicate with stockholders and customers;
- (i) Deliver results and celebrate success; and
- (j) Protect the reputation of the GOCC.

There should be employee development discussions and structured training programs for continuing personal and professional development for employees.

SEC. 37. *Customers.* – Integrity and honesty in dealings with customers is necessary for a successful and sustained business relationship. Every GOCC should operate a highly effective and efficient organization, focused on meeting customer objectives with the aim of providing services which give fair value and consistent quality, reliability and safety in return for the price paid for the same. GOCCs should operate policies of continuous improvement, of both processes and the skills of the staff, to take best advantage of advances in all aspect of society in order to ensure that it continues to add value to its customers' businesses.

⁷⁴Taken from Sec. II(2)(b)(i), SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002.



GOCCs should have clear and strong lines of communication which allow them to respond quickly and efficiently to customer and market requirements, as well as the public needs, and for the customers to receive consistent service in order to successfully and consistently deliver what the GOCC is mandated to do.

SEC. 38. *Suppliers.* – As with other relationships with the Stakeholders, GOCCs should aim to develop relationships and improve networking with business partners and suppliers based on mutual trust. GOCCs should aim to offer, through partnership with its suppliers, the best combination of state-of-the-art technology and world class service, strong customer relations and deep industry knowledge and experience, together with the capacity to implement and deliver value-added solutions on time and within budget.

SEC. 39. *Health and Safety.* – Every GOCC should aim to ensure a safe and healthy working environment for all its employees, outside contractors and visitors. The GOCC should comply with all relevant local legislation or regulations, and best practice guidelines recommended by national health and safety authorities. The staff should be informed regarding the policies and practices of the GOCC in order to maintain a healthy, safe and enjoyable environment.

SEC. 40. *Environment.* – GOCCs should consider that there are inevitable environmental impacts associated with daily operations. It shall be the goal of every GOCC to minimize harmful effects and consider the development and implementation of environmental standards to achieve this to be of great importance. As such, GOCCs should strongly encourage 3 R's: "*Reduce*", "*Re-use*", and "*Recycle*".

In the course of the operations of the GOCC, it should identify opportunities to reduce consumption of energy, water and other natural resources. GOCCs should also strive to re-use and recycle where possible and dispose of non-recyclable items responsibly, thereby minimizing our impact on the environment. In doing so, by adopting simple, environmentally friendly initiatives, the GOCC shall raise awareness among the members of the communities it affects.

VIII.

DISCLOSURE AND TRANSPARENCY REQUIREMENTS

SEC. 41. *Transparency as the Essence of Corporate Governance.* – The essence of corporate governance is transparency; the more transparent the internal workings of the GOCC are, the more difficult it will be for the Board and/or Management to mismanage the GOCC or to misappropriate its assets.⁷⁵ It is therefore imperative that GOCCs disclose all material information to the National Government and the public, its ultimate stakeholder, in a timely and accurate manner at all times.

⁷⁵ Adopted from Art. 8, Revised Code of Corporate Governance, SEC Memorandum Circular No. 6, s. 2009.



SEC. 42. GOCC Manual of Corporate Governance. – Every GOCC, acting through its Governing Board, shall promulgate and adopt its corporate governance rules and principles in accordance with this Code,⁷⁶ and which in addition shall contain the following items:

- (a) Detailed responsibilities of members of the Board, which shall be available to all Stakeholders and to the public;⁷⁷
- (b) Formal Charter of expectations that each Director shall sign and be committed to;⁷⁸
- (c) List of Disclosures to be made by Directors;⁷⁹
- (d) Statement by the Directors confirming the truth and fairness of the GOCC's financial statements⁸⁰ similar to a Statement of Management Responsibility; and
- (e) List of Fines and other consequences when Directors violate, or omit to carry out their duties, under applicable law.⁸¹

The Manual shall be submitted to the GCG, which shall evaluate the same and their compliance with this Code taking into account the classification and industry of the GOCC. The Manual shall be available for inspection by any of the identified Stakeholders of the GOCC at reasonable hours on business days.

SEC. 43. Mandatory Website. – In accordance with Section 25 of the Act, all GOCCs shall maintain a website and post therein for unrestricted public access:

43.1. On Institutional Matters:

- (a) For Chartered GOCCs, the latest version of its Charter;
- (b) For Nonchartered GOCCs, latest General Information Sheet (GIS) and brief company background including date of incorporation, history, functions and mandate;
- (c) List of Subsidiaries and Affiliates; and
- (d) Government Corporate Information Sheet (GCIS) as mandated by the GCG in its Memorandum Circular No. 2012-01.

43.2. On the Board and Officers:

- (a) Complete listing of the Directors and Officers with attached resume, and their membership in Board Committees;
- (b) Complete compensation package of all the board members and officers, including travel, representation, transportation and any other form of expenses or allowances;⁸²

⁷⁶Corporate Governance Principles for Business Enterprises, www.adb.org/documents/brochures/corporate_gov/corporate_gov_principles.pdf, last accessed 2 March 2012, hereinafter referred to as "ADB Corporate Governance Principles for Business Enterprises."

⁷⁷ADB Corporate Governance Principles for Business Enterprises.

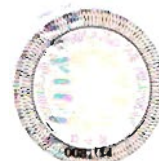
⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰*Id.*

⁸¹*Id.*

⁸²Sec. 25(e), R.A. No. 10149.



and comprehensive information on GOCCs, pursuant to the following parameters:

- 44.1. The ICRS shall provide a platform for the electronic submission by GOCCs of various reportorial requirements such as financial statements, list of directors and officers, compensation, operating budgets and performance commitments;
- 44.2. Reports provided under the Disclosure and Transparency Requirements in the Ownership and Operations Manual for GOCCs and the government corporate standards governing GOCCs shall also be incorporated into the System;
- 44.3. The ICRS shall also be linked initially to National Government Agencies with GOCC dealings, such as with the Commission on Audit (COA), Department of Finance (DOF), the Department of Budget and Management (DBM), and eventually to the Public Financial Management System and the Government Integrated Financial Management Information System (GIFMIS);⁹⁴ and
- 44.4. Every GOCC, acting through its Board and Management, shall ensure that it becomes an active and responsible member and contributor to the ICRS.

SEC. 45. *Mandatory Reports.* – The Board shall regularly submit, as may be required by the GCG and other Government Agencies, the following:

- (a) Performance Scorecards;
- (b) Implementation of the audit recommendations of COA; and
- (c) Compliance with commitments on servicing loans to, and borrowings guaranteed by, the National Government.

SEC. 46. *Other Reportorial Requirements.* – All GOCCs shall also submit to the GCG periodically in electronic form to the GCG the following:

- (a) Common Form financial statements based on annual audited financial statements within thirty (30) days from receipt of the report;
- (b) Dividend computations and payments in accordance with Republic Act No. 7656, also known as “The Dividends Law;”
- (c) Cash and investment balances;
- (d) For GFIs, actual and projected Statement of Cash Surplus/Deficit;
- (e) Capital expenditure program;
- (f) Statement of Financial Operations;

⁹⁴NEDA Philippine Development Plan 2011-2016, 50 (2011).



- (g) Acquisition or disposition of assets;
- (h) Off Balance Sheet transactions; and
- (i) Reports for the annual corporate budget call such as but not limited to the following:
 - (1) Physical and Financial Performance reports (the immediately preceding three (3) years); and
 - (2) Sources and Uses of Funds (the immediately preceding three (3) years) and the proposal for the coming year.

SEC. 47. The format and schedule of submission for the various reports shall be provided by the GCG in consultation with the Department of Finance (DOF), Department of Budget and Management (DBM), Commission on Audit (COA) and other Government Agencies as may be proper.

IX.

HIGHEST STANDARDS PRINCIPLE⁹⁵

SEC. 48. Public service being a public trust, nothing in this Code shall be construed as:

- 48.1. *Corporate Government Standards:* Relieving or excusing GOCCs, their Directors and Officers, from complying with more rigorous standards of corporate governance as those required by regulatory agencies having jurisdiction over their business enterprises or the industry in which they operate, such as the Philippine Stock Exchange (PSE) or the Securities and Exchange Commission (SEC) for GOCCs that are listed companies or public companies as provided for in the Securities Regulation Code, the *Bangko Sentral ng Pilipinas* (BSP) for GOCCs that are banking institutions, and the Insurance Commission (IC) for GOCCs which are insurance companies or insurance intermediaries.⁹⁶
- 48.2. *Reportorial Requirements:* A waiver of the separate reportorial requirements mandated by the regulatory agencies that have jurisdiction over the GOCC and its business operations.
- 48.3. *Administrative and Criminal Liabilities:* A waiver of the administrative or criminal liabilities imposed by existing laws, rules and regulations, such as the Anti-Graft and Corrupt Practices Act,⁹⁷ and the Code of Conduct and Ethical Standards for Public Officials and Employees for Government Officials,⁹⁸ for offenses or breach of ethical standards committed by Directors, Officers and employees of GOCCs.

⁹⁵Adopted from Sec. 5(c), R.A. No. 10149.

⁹⁶Sec. 5(c), R.A. No. 10149.

⁹⁷Rep. Act No. 3019.

⁹⁸Rep. Act No. 6713.

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MISCELLANEOUS PROVISIONS

SEC. 49. Amendments. – This Code 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.

SEC. 50. Effectivity. – This Code 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 November, 2012.


CESAR L. VILLANUEVA
Chairman


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

006271


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

