



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

# **GOCCs AS THE STATE'S TOOLS FOR ECONOMIC DEVELOPMENT**

BY

**GCG CHAIRMAN CESAR L. VILLANUEVA**

## **ADDRESS AT THE 1<sup>ST</sup> BCDA SUBSIDIARIES SUMMIT**

Held on 30 April 2012 at the JV del Rosario Rooms  
AIM Conference Center Manila, Makati City

**Chairman Felicito “Tong” C. Payumo, President and CEO, Atty. Arnel Casanova, CDC Chairman Eduardo SL Oban, Jr., JHMC Chairman Silvestre C. Afable, NorthRail Chairman Jose Martin Orosa Aliling, PPMC Chairman Ives Q. Nisce, CIAC President Victor Jose Luciano, JHMC President Dr. Jamie Eloise M. Agbayani, NorthRail President Conrado K. Tolentino, PPMC President Florante S. Gerdan, Members of the Boards of BCDA and the Subsidiaries, ladies and gentlemen, good afternoon to all of you.**

**Allow the me to add the Commission’s congratulations on holding the “First BCDA Subsidiaries Summit” under the theme: *“The BCDA Group: Trailblazing for National Development Through Good Corporate Governance.”* I speak on behalf of the members of the Governance Commission for GOCCs (GCG), whose appointive Commissioners have also honored your invitation, and may I call on Usec. Ma. Angela E. Ignacio, and Usec. Rainier B. Butalid for them to be formally recognized by the attendees. You will all be seeing more of us and our staff in the months to come.**

## ***WHAT IS THE GOVERNANCE COMMISSION FOR GOCCs (GCG)?***

### **1. NATURE AND FUNCTION OF THE GCG**

Apart from the three appointive Commissioners, the Secretary of Finance, Hon. Cesar V. Purisima, and the Secretary of Budget and Management, Hon. Florencio Abad, constitute the *Ex Officio* Members of the Commission, which, although under the Office of the President, is a relatively autonomous agency, endowed with such important powers over the life, operation and even the privatization or dissolution of GOCCs, that many of those who have vetted the law have alleged that the GCG has been constituted as a “Super-Commission”, with the power of life or death among members of the GOCC Boards and over the GOCCs themselves.

## ***WHAT IS THE NATURE AND ESSENCE OF R.A. No. 10149?***

### **1. SELF-EXECUTORY NATURE OF THE GOCC GOVERNANCE ACT OF 2011**

We have received many inquiries at the Commission on when we were going to be issuing the Implementing Rules and Regulations (IRR) for R.A. No. 10149. Many inquirers have been a little shock with our answer: “Never”.

There is no provision in R.A. No. 10149 that specifically requires the issuance of implementing rules and regulations for the law to come into effect. For indeed, as most lawyers in the audience know, many important legislations have been delayed in their implementation until the covering IRR have been issued. There is likewise no provision in R.A. No. 10149, which you find in recent legislations, on the “Congressional Oversight Committee.”

The GOCC Governance Act of 2011 does not contain a provision for implementing rules, for as in the case of important legislations in the past, such as the Corporation Code, the provisions of R.A. 10149 are self-

executory. Indeed, the Act sees its policies, principles and rules maturing and growing as the GCG manages the GOCCs system of the country, through its memorandum circulars and rulings. More importantly, the so-called “implementing rules” of the Act shall find themselves expressed in manuals and codes that the Commission is mandated to promulgate, sometimes on its own authority, and others with the approval of the President of the Philippines.

## **2. INSTITUTIONALIZATION OF HARD LESSONS LEARNED IN THE PHILIPPINE GOCC GOVERNANCE REFORM MOVEMENT**

Almost three decades ago, there was a formal recognition of the fact that “there [was a] need to improve the efficiency of government-owned and controlled corporations and their subsidiaries in order to promote economy, efficiency and effectiveness in the delivery of public services;” and there was under the past Marcos regime “an excessive proliferation of government-owned and controlled corporations without clear delineation of the grounds for government activities in corporate form and without adequate supervision and control.” So much so that in February, 1988, then President Corazon C. Aquino issued Administrative Order No. 59, entitled “Rationalization of the Government Corporate Sector”, where the Executive Department (a) laid down the principles and standards to be followed in the creation, management, administration, supervision and liquidation of government-owned and controlled corporations; (b) defined the guidelines in determining the areas or activities of government in which the corporate form shall be utilized; and (c) set down policy measures to improve the organizational and functional capabilities of government corporations.

In 1993, President Corazon Aquino issued Executive Order No. 55 and Memorandum Circular No. 64, which not only laid down the principles relating to the attainment of prudential level of government expenditures in the GOCC Sector, but provided as well for the rationalization of the sector and the move towards privatization, and reconstituted the GCMCC as central oversight body for the sector under the Office of the President.

Nonetheless, abuses in the GOCC Sector continued to proliferate in subsequent administration that President Benigno S. Aquino III, had to highlight such abuses during his first State of the Nation Address (SONA), and formally issue Executive Order No. 7 (s. 2010) to provide (a) a moratorium on the increase in salaries, allowances, incentives and other benefits of officers and rank-and-files employees of GOCCs; and (b) a complete suspension of all allowances, bonuses and incentives for members of the Boards of Directors/Trustees of GOCCs, except for reasonable *per diems*.

In June, 2011, R.A. No. 10149 was promulgated into law, and the policy framework and the guiding principles found in A.O. 59 and Memo Circular No. 64 have finally found themselves expressed in statutory language under R.A. No. 10149, thereby giving the GOCC Reform Movement in the Philippines on a firmer grounds for long-term evolvement and development.

The Act has also institutionalized within its provisions the OECD Governance Principles for SOEs, as well as the fiduciary standards set for directors and officers of public corporations set under the Code of Conduct for Public Officials and Employees.

R.A. No. 10149 has been promulgated based on our national experience in the GOCC Sector: it is the embodiment of a time of great triumph in the long march towards reforming the GOCC Sector.

### ***WHAT ARE THE MANDATES OF THE GCG?***

In a petition pending in the Supreme Court seeking to declare R.A. No. 10149 unconstitutional, the GCG has been described by Congressman Edcel Lagman to have been constituted by the Act with “awesome powers”. Indeed, the GCG has been given the powers and mandates to:

- (a) Classify, Re-classify, as well as Sub-classify GOCCs;<sup>1</sup> Conduct periodic studies, examination, evaluation and require reports on their operations and management; and Evaluate their

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<sup>1</sup>Sec. 5(b), R.A. No. 10149.

performance and determine the relevance of GOCCs, to determine whether a GOCC should be:

- Reorganized or Rationalized;
- Merged or Streamlined;
- Abolished; or
- Privatized;<sup>2</sup> or
- 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 to ensure that commercial functions of the GOCC do not conflict with such regulatory functions.<sup>3</sup>

**(b) Formal Adopt and Promulgate the following Public Governance Documents:**

- Ownership and Operations Manual for GOCCs; and
- Code of Corporate Governance for GOCCs;<sup>4</sup>

**(c) Pursue within the GOCC Sector Good Governance Practices, namely:**

- 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;<sup>5</sup>
- Promulgate, with the approval of the President of the Philippines, and implement the Fit and Proper Rule that shall identify the necessary skills and qualifications required of Appointive Directors;<sup>6</sup>
- Establish and implement Performance Evaluation Systems (PES), including Performance Scorecards applicable to all GOCCs in general, and to the various GOCC classifications, in particular;<sup>7</sup>
- Conduct periodic study, examination, evaluation and assessment of the performance of the GOCCs, receive, and

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<sup>2</sup>Sec. 5(a), R.A. No. 10149.

<sup>3</sup>Sec. 5(l), R.A. No. 10149.

<sup>4</sup>Sec. 5(c), R.A. No. 10149.

<sup>5</sup>Sec. 5(d), R.A. No. 10149.

<sup>6</sup>Secs. 5(e) and 16, R.A. No. 10149.

<sup>7</sup>Sec. 5(f), R.A. No. 10149.

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;<sup>8</sup>

- (c) 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;<sup>9</sup>
- (d) 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;<sup>10</sup>
- (e) Formulate the *per diems*, allowances, incentives and compensation structure for the members of the Governing Boards;<sup>11</sup>
- (f) Coordinate and monitor the operations of GOCCs to ensure their alignment and consistency with the national development policies and programs,<sup>12</sup> 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;<sup>13</sup>
- (g) Review the functions of each GOCC and Request, through its 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;<sup>14</sup> and
- (h) Review and recommend to the President for approval the plan by any Government Agency:
  - For the establishment and incorporation of a GOCC or a Related Corporation pursuant to the provisions of the Corporation Code of the Philippines;<sup>15</sup> or
  - To purchase a corporation or acquire controlling interest in any corporation.<sup>16</sup>

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<sup>8</sup>Sec. 5(g), R.A. No. 10149.

<sup>9</sup>Sec. 5(i), R.A. No. 10149.

<sup>10</sup>Secs. 5(h) and 8, R.A. No. 10149.

<sup>11</sup>Sec. 23, R.A. No. 10149.

<sup>12</sup>Sec. 5(j), R.A. No. 10149.

<sup>13</sup>Sec. 5(k), R.A. No. 10149.

<sup>14</sup>Sec. 26, R.A. No. 10149.

<sup>15</sup>Sec. 27, R.A. No. 10149.

<sup>16</sup>Sec. 28, R.A. No. 10149.

Of all the important mandates given to the Commission under the law, I shall discuss with you this afternoon just three of them before moving into the General Principles of Public Corporate Governance, namely:

- (a) Adoption of a Ownership and Operations Manual, the Code of Corporate Governance for GOCCs;
- (b) Adoption of the Fit and Proper Rule; and
- (c) Adoption and Promulgation of the Compensation and Position Classification System for GOCCs.

### **OWNERSHIP AND OPERATIONS MANUAL FOR GOCCS**

Under R.A. No. 10149, the GCG, in consultation with the relevant government agencies and stakeholders,” is mandated to adopt within 180 days from its constitution (20 October 2011), an Ownership and Operations Manual and the Government which shall be consistent with the Medium-Term Philippine Development issued by NEDA,<sup>17</sup> which we have been informed is officially named the “Philippine Development Program” (PDP).

The function of the Manual is to provide a Writ, the “*Magna Carta*” so-to-speak, for the GOCC Sector, as it —

- Provides for the Governing Principles and Objectives of the State as an “Active Owner” of the GOCCs;
- Defines the Role and Relationship of the State, its agencies and instrumentalities, vis-à-vis the GOCCs as “significant tools for national development”;
- Provides for the roles and responsibilities of GOCCs and the Primacy of the Boards of Directors/Trustees in the governance of the GOCCs;

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<sup>17</sup>Sec. 5(c), R.A. No. 10149.

- Provides Guidelines the in the Monitoring and Evaluation of the GOCCs and their Governing Boards;
- Provides for the Policy Framework for Tasking GOCCs to Undertake Non-Commercial Activities.

For the Governing Boards of GOCC, you ought to look at the Ownership/Operations Manual serving as the “Bill of Rights and Responsibilities” as you pursue the proper role and responsibilities of the GOCC you serve within the national development scheme.

For example, against an overbearing Supervising Agency, the Governing Board of a GOCC may point to the provision of the Manual that explicitly mandates that —

4.3. The State as an active owner, acting through the National Government, shall exercise its ownership rights according to the legal structure of each GOCC.

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; x x x.

*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 that the Governing Boards shall be allowed full operational autonomy to achieve their defined objectives of the GOCCs.

For GOCCs, like SSS and GSIS, who really are not holding Government Funds, but are actually holding the funds of employees and pensioners,

they can invoke Article 6 of the Manual to parry the demands of an Administration on off-beat “pet projects”, thus:

*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 of the public 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 to such system.

### CODE OF CORPORATE GOVERNANCE FOR GOCCS

Under R.A. No. 10149, the GCG, in consultation with the relevant government agencies and stakeholders,” is mandated to adopt within 180 days from its constitution (20 October 2011), a Government Corporate Standards Governing GOCCs, where the government corporate standards governing GOCCs “shall be no less rigorous than those required by the Philippine Stock Exchange or the Securities and Exchange Commission for listed companies, or those required by the Bangko Sentral ng Pilipinas or the Insurance Commission for banking institutions and insurance companies, as the case may be.”<sup>18</sup>

The purpose of the Governance Code is to instill within the GOCC Boards and Management the highest sense of responsibility, transparency and accountability, as it shall cover the following areas:

- (a) The Role and Responsibilities of the Governing Boards, and the Individual Directors;
- (b) Disclosure and transparency requirements;
- (c) Code of Ethics of Directors and Officers;

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<sup>18</sup>Sec. 5(c), R.A. No. 10149.

- (d) Creation of Board committees and similar oversight bodies;**
- (e) Providing for an Integrated Corporate Reporting System; and**
- (f) CSR Statement and the Role of Stakeholders.**

**In addition, the Governance Code contains a provision of the Obligations of the GOCC to the Member the Governing Board, thus:**

**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 hailed 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.

We in the Commission have deemed it important to emphasize, and provide a legal document as the basis of, the right of members of the Governing Boards of GOCC to receive full support and a reasonable means of personal protection for them to be able to discharge their duties and responsibilities as fiduciaries of the State.

### **THE FIT AND PROPER RULE**

Among the mandates of the GCG is that “In addition to the qualifications required under the individual charters of the GOCCs and in the bylaws of GOCCs without original charters, the GCG shall identify necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors.”<sup>19</sup>

As you know, under R.A. No. 10149, “An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG . . . [and that] 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.”<sup>20</sup>

The Act defines the “Fit and Proper Rule” as “the standards for determining whether a member of the Board of Directors/Trustees or CEO is fit and proper to hold a position in a GOCC which shall include, but not be limited to, standards on integrity, experience, education, training and competence.”<sup>21</sup>

The proposed Memorandum Circular No. 2012-05, which contains the proposed Fit and Proper Rule submitted to the President, have been adopted from the standards mandated under similar BSP, SEC and IC rules. Once duly approved, the Fit and Proper Rule shall provide a basis by which the GCG in making recommendations, and the President of the Philippines, in making actual appointments to the Governing Boards, shall be able to

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<sup>19</sup>Sec. 5(e), R.A. No. 10149.

<sup>20</sup>Sec. 15, R.A. No. 10149.

<sup>21</sup>Sec. 3(j), R.A. No. 10149.

impose a high sense of professionalism and integrity into the GOCC Sector under the Filipino aegis, *“Walang personalan, trabaho lang ito; ito ang batas.”*

***WHAT OF THE OWNERSHIP MANUAL, THE GOVERNANCE CODE AND THE FIT AND PROPER RULE?***

Many of you who are veterans in the GOCC field may rightfully ask the questions: *“So what is so new or earthshaking about the Ownership/Operations Manual, the Governance Code, or even the Fit and Proper Rule? Similar documents and monitoring mechanisms have been done in the past — remember the GCMC, the GCMCC, and the monitoring work done by the DOF — and yet abuses have continued?”*

My answer is that: Today, the paradigm has changed; the GCG is not only a “central advisory, monitoring and oversight body”, but more importantly, it has the powers *“to formulate, implement and coordinate”* policies, rules and regulations governing all covered GOCCs.

GOCCs and their Governing Boards may choose to ignore the Ownership/Operations Manual and the Governance Code only at their own peril, for the law grants to the Commission not only the power to “Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized in consultation with the department or agency to which a GOCC is attached.”<sup>22</sup>

The law provides that “Upon determination by the GCG that it is to the best interest of the State that a GOCC should be reorganized, merged, streamlined, abolished or privatized, it shall:

“(i) Implement the reorganization, merger or streamlining of the GOCC, unless otherwise directed by the President; or

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<sup>22</sup>Sec. 5(a), R.A. No. 10149.

**“(ii) Recommend to the President the abolition or privatization of the GOCCs, and upon the approval of the President, implement such abolition or privatization, unless the President designates another agency to implement such abolition or privatization.”<sup>23</sup>**

**More importantly, Boards of Directors/Trustees of GOCCs may ignore the terms of the GOCC Manual and Code, as well as the directives of the Commission, only at the expense of their professional health or well-being! Under R.A. No. 10149, not only is the Commission empowered to “identify necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors,”<sup>24</sup> we are mandated to “Establish the performance evaluation systems including performance scorecards which shall apply to all GOCCs.”<sup>25</sup>**

**An Appointive Director can be appointed to a GOCC Board by the President only “from a shortlist prepared by the GCG.”<sup>26</sup> That is the reason why the Commission is empowered to “formulate its rules and criteria in the selection and nomination of prospective appointees and shall cause the creation of search committees to achieve the same. All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule” as promulgated by the Commission.**

**For those who are incumbent Appointive Directors, the law provides that “An Appointive Director may be nominated by the GCG for reappointment 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 for the GOCCs.”<sup>27</sup>**

**Therefore, members of the GOCC Boards who refuse to heed the standards of governance mandated under the GOCC Manual, or who do not**

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<sup>23</sup>Sec. 5(a)(6), R.A. No. 10149.

<sup>24</sup>Sec. 5(e), R.A. No. 10149.

<sup>25</sup>Sec. 5(f), R.A. No. 10149.

<sup>26</sup>Sec. 15, R.A. No. 10149.

<sup>27</sup>Sec. 17, R.A. No. 10149.

meet the target commitments they have made to the Commission ran the risk that they cannot be re-appointed by the Commission simply not including their names in the shortlist for re-appointment based on good cause.

### **HIGHEST STANDARDS OF FIDUCIARY DUTIES GOVERNING GOCC DIRECTORS AND OFFICERS**

One of the rather-shocking realization that newly-appointed directors from the private sector experience once they assume their directorship positions is the realization that they are now “*Public Officials*”, and saddled with the duties, obligations and disqualifications, as well as the criminal liabilities, provided for under both the Anti-Graft and Corrupt Practices Act,<sup>28</sup> and the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>29</sup> Such neophytes initially consider themselves as part-time volunteers from the private sector who are not leaving their jobs and professional commitment, but who on-the-side are volunteering their services to public service in the GOCC Sector.

They are therefore irritated to find out that even when they have to travel abroad for private matters using their private funds, that they have to obtain an authority to travel from the head of agency. They are even utterly dismayed that like every other government employee — and certainly they do not consider themselves as government employees — they have to accomplish under oath and file with the Ombudsman the Statement of Assets, Liabilities and Net Worth (SALN) constituted of figures that even CPAs (and not even the Chief Justice of the Philippine) can fill-up with moral and mathematical certainty.

And of course, the greatest shock for them is to realize that unlike the standard of “due diligence” required of directors even in publicly-listed companies in the performance of their duties and responsibilities as members of the Board, every Director and Officer in a GOCC is imposed by statutory standards set under R.A. No. 10149, with “extraordinary

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<sup>28</sup>R.A. No. 3019.

<sup>29</sup>R.A. No. 6713.

diligence". Truly, one of the major shifts in paradigm in *Public Corporate Governance* that has outdone *Private Corporate Governance* is the legal fact that the standards on the fiduciary duties of Directors, Trustees and Executive Officers of GOCCs has been raised to the highest possible standards under the GOCC Governance Act of 2011.

This is the unique form of governance principle, which I allude to the "Twin-levels of Responsibilities for GOCC Directors and Officers in the Governance Code", *i.e.*, that of first being Public Officials, and second, that of being saddled with the standard of "extraordinary diligence" in the performance of their duties and responsibilities.

*Firstly*, can there be any doubt that Appointive Directors (and necessarily *Ex Officio* Directors) are "Public Officers" by the fact that like public officers in the National Government, they are appointed to office by the President of the Philippines. This is in contrast with the practice before R.A. No. 10149, where the Appointive Directors were merely the subject of a "desire letter" from the President, but were elected into office at the Annual Stockholders' Meeting by a vote of the registered stockholders.

*Second*, in order to make Appointive Directors more responsive to their duties and to earn their commission on an annual basis, R.A. No. 10149 provides that "Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Directors shall be for one (1) year unless sooner removed for cause."<sup>30</sup>

From hereon, Appointive Directors have to live up to their annual commitments and meet the targets they set out, otherwise they ran the risk of not being included in the shortlist for re-appointment.

*Thirdly*, the law has squarely placed the responsibility and accountability in promoting "*Corporate Governance*" in GOCCs<sup>31</sup> on the

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<sup>30</sup>Sec. 17, R.A. No. 10149.

<sup>31</sup>Defined under Sec. 3(l) R.A. No. 10149 as "*Government Corporate Governance Standards*" as "a set of principles derived from law and practices, rules and standards prescribed by the . . . GCG that general long-term and desirable economic value for the State. It shall also refer to a system whereby shareholders, creditors, and other stakeholders of a corporation ensure that management enhances the value of the corporation as it competes in an increasingly global market place."

shoulders of the GOCC Governing Board, rather than only on the GOCC Management, by the following key provisions:

- (a) Imposing the duty of diligence of acting in the best interest of the GOCC, not only based on “due diligence of a good father of a family,” but that “with utmost good faith in all dealings with the property and monies of the GOCC . . . with extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;”<sup>32</sup>
- (b) Constituting GOCC Directors/Trustees as assuming a trustee relation to the properties, interests and monies of the GOCC, for which they are bound to account for all the profits earned, even when they hazard their own funds;<sup>33</sup>
- (c) Mandating that the “members of the Board and the Officers must exercise extraordinary diligence in the conduct of the business and in dealing with the properties of the GOCC. Such degree of diligence requires using the utmost diligence of a very cautious person with due regard for all the circumstances;”<sup>34</sup> and
- (d) Making the CEO, the President, or the highest-ranking officer of each GOCC, accountable directly to the Board, by providing that he/she “shall be elected annually by the members of the Board from among its ranks . . . [and] subject to the disciplinary powers of the Board and may be removed by the Board for cause.”<sup>35</sup>

The leading principle of corporate governance in the private sector that “*The Board is primarily accountable to the Shareholders, and Management is primarily accountable to the Board,*”<sup>36</sup> has now found

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<sup>32</sup>Sec. 19, R.A. No. 10149.

<sup>33</sup>Sec. 20, R.A. No. 10149.

<sup>34</sup>Sec. 21, R.A. No. 10149.

<sup>35</sup>Sec. 18, R.A. No. 10149.

<sup>36</sup>Sec. IV(1), original SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002.

statutory expression in R.A. No. 10149, that the GOCC Board, headed by the Chairman, is primarily accountable to the State; and Management, led by the CEO, is primarily accountable to the Board. Thus, the Act provides expressly that it is within the fiduciary duty of members of the Board of GOCCs to “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.”<sup>37</sup>

It is therefore in this light that the Commission has opined in a number of rulings that the “Directors & Officers’ Liability Insurance” (DOLI) should constitute a common feature in all the Boards of GOCC — having imposed the highest level of responsibility and accountability on the members of the Board, *i.e.*, that of extraordinary diligence, it is but fair that when the GOCC itself and/or the members of the Board and Management are hailed before tribunals on matters that are within the official functions and capacity, that there be proper recovery of the costs of litigation and the judgment liability imposed.

All the foregoing principles have found themselves expressed in the proposed Memorandum Circular No 2012-07, or the Code of Corporate Governance for GOCCs.

### **CPCS FOR GOCCS**

Finally, the Law mandates the Commission to “Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable.”<sup>38</sup>

After conducting such a study, the Commission is mandated to “develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of

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<sup>37</sup>Sec. 19(e), R.A. No. 10149.

<sup>38</sup>Sec. 5(h), R.A. No. 10149.

positions grouped into such categories as the GCG may determine, subject to the approval of the President.”<sup>39</sup>

The importance of the CPCS has been recognized by the Office of the President which has allotted a special fund from to allow the procurement of internationally-renowned consultant of compensation and rewards systems to assist the GCG in formulating the CPCS. Even as we speak, the procurement process is well underway, although there have been unforeseen delays, and we hope to start the process by the third quarter of the year, and that a year therefrom, the formal CPCS, grouped into sectors, shall be ready for promulgation.

Once the CPCS is approved by the President of the Philippines, then gone would be the days when there used to be two classes of GOCC citizenship: those which are “SSL-Covered” and those which “SSL-Exempt”. Gone also are the days when non-chartered GOCCs would merrily go on their way to evolve a compensation, benefits and rewards packages for the officers and employees which had no rhyme nor reason other than just the fact that they do so based on allegedly “private sector standard” on the basis of the fiscal autonomy alleged enjoyed by their Boards. Indeed, the GOCC Governance Act of 2011 says in clear terms that “Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.”<sup>40</sup>

We shall be developing and evolving the CPCS with both the Civil Service Commission (CSC) and the Department of Budget and Management (DBM). We all must recognize that in spite of the awesome powers granted to the GCG under R.A. No. 10149, the CSC is still the constitutional body mandated to provide for the qualification standards and compensation system for Chartered GOCCs. Likewise, we have recognized under the Ownership/Operations Manual the continued power and authority of DBM as a Service-Wide Agency to “(a) evaluate and recommend the annual

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<sup>39</sup>Sec. 8, R.A. No. 10149.

<sup>40</sup>Last sentence under Sec. 9, R.A. No. 10149.

budgetary support to GOCCs; and (b) evaluate and approve the annual corporate operating budgets (COBs) of GOCCs.”

In the meantime, what do we do with pending applications relating to compensations, allowances and other benefits, specially with GOCCs, like NorthRail and CDC, who are besieged by demands on their officers and employees to resume the benefits and allowances they were receiving, or to approve the new compensation schemes found in CBA’s negotiated, prior to the moratorium set under Executive Order No. 7 (s. 2010)? The Commission has worked out a Special Task Force with the DBM, and a formal Memorandum of Agreement (MOA) has been approved and ready for execution this week, that will allow the processing of pending applications with both the GCG and the DBM.

### LEAVETAKING

We end this presentation this afternoon with two brief points.

*Firstly*, although the Commission is granted so much power to curb the abuses of the past by certain GOCCs when it comes to directors, officers and employees compensation, benefits and other allowances, but at the same time setting the rate and standards thereof to more competitive levels, “taking into account the performance of the GOCCs, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors,”<sup>41</sup> nonetheless, the GCG itself is not a GOCC, and its members do not have security of tenure at all. This would ensure that the whole process of CPCS setting is not pursued by the Commission for self-serving ends.

*Finally*, GOCCs constitute such an important component of the program of every President of the Republic, and that GOCCs cannot be isolated from politics – indeed the Law expressly places the GCG under the Office of the President, and all the members of the Commission serve at the pleasure of the President. However, judging from the policies laid down under the law, and the powers granted to the GCG therein, there is little

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<sup>41</sup>Sec. 9(c), R.A. No. 10149.

**doubt that the GOCCs have been reserved as the venue for the President's "professional politicians" and to nurture the Administration's professional component. No less than the Declaration of Policy under the GOCC Governance Act of 2011 so states: "The state recognizes the potential of government-owned or -controlled corporations (GOCCs) as significant tools for economic development. It is thus the policy of the State to actively exercise its ownership rights in GOCCs and to promote growth by ensuring that operations [of GOCCs] are consistent with national development policies and programs."<sup>42</sup>**

**Thank you for your indulgence.**

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<sup>42</sup>Sec. 2, R.A. No. 10149.