



Office of the President of the Philippines
GOVERNANCE COMMISSION
FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS
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PHILIPPINE'S NEW PARADIGM ON PUBLIC CORPORATE GOVERNANCE

DELIVERED BY:

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FOR:

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INTRODUCTION

Good morning, *Chief Justice Artemio Panganiban, Bangko Sentral ng Pilipinas Deputy Governor Nestor Espenilla Jr., Securities and Exchange Commission Director Justina Callangan, fellow workers in government, Representatives of Corporate Governance Asia, Institute of Corporate Directors, Integrity Initiative and GGAPP, distinguished guests and delegates, Ladies and Gentlemen.*

Allow me to extend the Commission's congratulations to the organizers on holding the "First Philippine International Corporate Governance Forum." I speak on behalf of the members of the Governance Commission for GOCCs (GCG), whose appointive Commissioners aside from myself include our Chairman, **SECRETARY CESAR L. VILLANUEVA**, and **UNDERSECRETARY RAINIER B. BUTALID**. I also bring to you the well wishes of our two Ex-Officio members, DOF Secretary Cesar V. Purisima, and DBM Secretary Florencio B. Abad.

Sec. Villanueva sends his regrets as he was originally scheduled to be the keynote speaker for today's event. Nonetheless, he has prepared this presentation and asked me to speak on his behalf and share with you the new paradigm shift brought about by the "GOCC Governance Act of 2011" or R.A. No. 10149 from the vantage point of the Commission, beginning with a brief history of the corporate governance reform movement in the GOCC Sector.

BRIEF HISTORY

The need for reform in the government corporate sector began almost three decades ago at a time when there was excessive proliferation of GOCCs without clear delineation of the grounds for government activities in corporate form and without adequate supervision and control. Then President Marcos created the Government Corporate Monitoring Committee (GCMC) through Executive Order No. 936 in 1984. At that time, the number of GOCCs had ballooned to 303.

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 Government Corporate Monitoring and Coordinating Committee (GCMCC).

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, thereby putting the GOCC Reform Movement in the Philippines on firmer grounds for long-term evolution and development.

R.A. No. 10149 also recognized that the predecessors of the Commission, consisting of inter-agency efforts, had very little success because the powers given to them were not appropriate for their functions and duties. The attempt under the previous administration to monitor the GOCC Sector through the Department of Finance and the Department of Budget, overstretched the resources of both Departments, which were tasked with handling many other equally important concerns of the National Government and GOCCs comprised a relatively minor part of their respective mandates.

Consequently, abuses in the GOCC Sector continued to proliferate. This led President Benigno S. Aquino III to rebuke such abuses in his first two SONAs, making it clear that the *“Tuwid na daan”* and the *“Daylight”* policies encompass the government corporate sector as well.

The SONAs were then followed by the issuance of E.O. No. 7 in 2010, and E.O. No. 24 in 2011, imposing a moratorium on the increase in salaries, allowances, incentives and other benefits of officers and employees of GOCCs and suspending all allowances, bonuses and incentives for members of the Boards of Directors/Trustees of GOCCs, except for reasonable *per diems* and performance based incentives.

R.A. No. 10149 is thus the cornerstone in the government’s resolute march to initiate and institutionalize a paradigm shift in the governance of GOCCs. It ushers in a new paradigm that adopts best practices in the private sector and at the same time pushes the bar in other aspects by providing certain corporate governance principles that are bolder in scope and character than the governance reform movement in private corporate governance.

At the center of this new paradigm is our commission, the **“GOVERNANCE COMMISSION FOR GOCCs” (GCG)**, 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”. The GCG’s mandate is to serve as the “central advisory, monitoring and oversight body with authority to formulate, implement and coordinate policies in the government corporate sector.” The creation of the Commission addresses the fundamental problems facing the government corporate sector, such as a weak regulatory framework; lack of a clear entity that exercises the State’s ownership functions; poor oversight mechanisms; the need for institutional rationalization and fiscal discipline to stop the drain on government finances; and the absence of a *central* monitoring and policy coordinating body.

To put things in perspective, let me give a background on the portfolio of the GCG. The Philippines currently has 158 GOCCs, a marked reduction from the high of 303 in 1984 but still a significant number considering the size of our country. Of the 158, 84 are chartered, meaning they were created through a legislative act, and 74 have been registered with the Securities and Exchange Commission. Total Assets of the Philippine GOCC sector as of the end of 2010 reached almost ₱5 Trillion or over US\$113.4 Billion, making us possibly the largest conglomerate in the country. We view this as a challenge and are inspired each day as we recognize the amount of national development we can spur and the number of Filipino lives we can touch if only we can put these assets into good use.

The Commission has been entrusted with carrying out this new paradigm in order to ensure the financial viability and fiscal discipline in the GOCC Sector through adherence to the highest standards of corporate governance. The paradigm consists of six (6) main thrusts:

First, R.A. No. 10149 emphasizes that Directors and Officers of GOCCs have twin-levels of responsibilities - that of first being Public Officials, and second, that of being Directors and Officers. One of the rather-shocking realizations that newly-appointed directors from the private sector experience once they assume their directorship positions in a GOCC is that they are now “*Public Officials*”, and therefore saddled with the duties, obligations and disqualifications, as well as the criminal liabilities, provided for under both the

Anti-Graft and Corrupt Practices Act,¹ and the Code of Conduct and Ethical Standards for Public Officials and Employees.² As public officers, they must see to it that the GOCC where they serve operates at all times not just for profit but more importantly as a significant tool for national development. As Directors and Officers of a corporation, they must conduct the business of the GOCC as an ongoing concern.

Second, R.A. No. 10149 recognizes the public interest inherent in GOCCs in contrast to private corporations, and demands the same recognition and adherence from the Directors and Officers of GOCCs by imposing a *higher* standard in the conduct of the business of the GOCC, that of *extraordinary diligence*. In the private corporate sector, only due diligence is required.

Third, the law imposes a one year term of office on all directors appointed to the Boards of GOCCs similar to the practice of the private sector. In the past, the term of office would vary as the determination of the terms was mainly political, *ad hoc*, and without any specific policy considerations in mind. Directors were assured of their positions up to the end of their respective terms regardless of their performance, which took as long as six years in some cases. Now, they must continuously “earn their keep” in line with the principles of good governance, and may be reappointed by the President only if they obtain a performance score of above average as evaluated by the Commission. This will be done through the implementation of Performance Scorecards.

Fourth, the law also seeks to make the government corporate sector emulate the private sector insofar as providing for clear accountability of the CEO/Management to the Board and refocusing responsibility for the operations of GOCCs on the respective Governing Boards. Accordingly, R.A. No. 10149 requires the CEO of a GOCC to be elected annually by the members of the Board from among its ranks. The CEO, as head of management, is the agent of the Board, subject to the Board’s disciplinary powers. This corrects the mistaken notion in the past that the CEOs had their own mandate apart from

¹R.A. No. 3019.

²R.A. No. 6713.

the Board brought about by their being appointed directly by the President of the Philippines.

Fifth, R.A. No. 10149 reigns in all GOCCs under its coverage into one uniform and standard compensation and position classification system or CPCS. This brings to an end the disparity between the compensation systems of GOCCs on account of coverage or exemption from the Salary Standardization in government, brought about by an incoherent policy framework in creating GOCCs and determining the compensation systems of GOCCs. At the same time however, the CPCS is intended to provide the necessary policy environment for balancing the goals of fiscal prudence and strengthening the overall governance and management of GOCCs by attracting and motivating a corps of competent professionals, among others.

Lastly, R.A. No. 10149 mandates the Commission to rationalize the GOCC Sector. In consultation with Supervising Agencies, the Commission will determine the relevance of each GOCC and carry out reorganizations, mergers, rationalizations, or recommend even abolition or privatization to the President of the Philippines. It also provides for the separation of commercial and regulatory functions to avoid conflicts of interest.

ORGANIC DOCUMENTS

Many have inquired on when the Commission would be issuing the Implementing Rules and Regulations or IRR for R.A. No. 10149, and have been a little shocked with our answer: “*Never*”.

There is no provision in R.A. No. 10149 that specifically requires the issuance of IRR for the law to come into effect. An IRR would have only delayed its implementation, which has been the case in many important legislations that required the issuance of an IRR.

The Commission’s stand is that similar to the Corporation Code, ***the provisions of R.A. 10149 are self-executory***. This allows for the policies, principles and rules in R.A. No. 10149 to mature and grow as the GCG manages the GOCC Sector through the issuance of memorandum circulars, rulings, and most especially the organic documents governing the GOCC

Sector consisting of the Ownership and Operations Manual for GOCCs, the Code of Corporate Governance for GOCCs, and the Fit and Proper Rule.

Ownership Manual

The Ownership and Operations Manual is intended to provide a Writ, the “*Magna Carta*” so-to-speak, for the GOCC Sector. 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;
- 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.

Governing Boards of GOCC should look at the Ownership/Operations Manual as a “Bill of Rights and Responsibilities” as they pursue the proper role and responsibilities of the GOCC they serve.

For example, against an overbearing Supervising Agency, the Governing Board of a GOCC may point to the provision of the Manual that explicitly calls for respect of the legal structure and operational autonomy of each GOCC. While Agencies are mandated to ensure that the corporate plans and programs of GOCCs under their supervision are congruent with the sectoral objectives and priorities of their respective departments, Supervising Agencies shall not be involved in the day-to-day management of GOCCs.

For GOCCs like SSS and GSIS who really do not hold 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”, which clarifies that the role of the State in such GOCCs “is not that of an active owner or investor, but 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.”

Code of Corporate Governance

The Code of Corporate Governance, on the other hand, is intended to instill within the GOCC Boards and Management the highest sense of responsibility, transparency and accountability. It covers 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;
- (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 on the Obligations of the GOCC to the Members of the Governing Board, such as the provision of staff support. Another key feature is allowing GOCCs to obtain Directors and Officers Liability Insurance (DOLI) coverage for members of the Board and Officers. The DOLI is intended to insure against contingent claims and liabilities that may arise from the performance of their functions, except in cases when there has been a breach of a fiduciary duty or a commission of fraud. This is of particular importance when viewed in the context of R.A. No. 10149 having imposed a lot of responsibilities on the Board and required them to act with extraordinary diligence.

Fit and Proper Rule

Last but not least, the Fit and Proper Rule is the formal mechanism whereby the Commission “identif[ies] the necessary skills and qualifications required for Appointive Directors, and [serves as the guiding document for] recommend[ing] to the President a shortlist of suitable and qualified candidates for Appointive Directors.”³ Such skills and qualifications are in addition to those required under the individual charters or bylaws of GOCCs. The rule provides the standards “...on integrity, experience, education, training and competence.”⁴

The Rule is a codification of the standards imposed by the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission and the Insurance Commission, and provides for the application of the highest standard whenever more there is more than one. It is also intended as the guiding document for appointments to the Boards of GOCCs as an Appointive Director can be appointed to a GOCC Board by the President only “from a shortlist prepared by the GCG.”⁵

The rule thus also provides the framework for instilling professionalism and integrity in the GOCC Sector. For example, the Rule provides that Appointive Directors may be reappointed by the President “only if he/she obtains a performance score of above average in the...immediately preceding year of tenure [based on the Commission’s evaluation.]”⁶

Therefore, members of the GOCC Boards who refuse to heed the standards of governance mandated under the GOCC Manual, or who do not meet the target commitments they have made to the Commission run the risk that they cannot be re-appointed by the President by the GCG simply not including their names in the shortlist for re-appointment based on good cause.

³Sec. 5(e), R.A. No. 10149.

⁴Sec. 3(j), R.A. No. 10149.

⁵Sec. 15, R.A. No. 10149.

⁶Sec. 17, R.A. No. 10149.

CLOSING

In closing, I think few will disagree with the statement that R.A. No. 10149 is a well crafted law. At the Commission, we are each issued our own copy of the law and call it “the bible” as Chairman Villanueva often refers to it. But like any well-crafted law, it is only as good as its execution, which is a great responsibility. Nonetheless, we at the Commission are confident that we can achieve the law’s vision of transforming the GOCC Sector into a significant tool for national development by following a few simple rules.

First, the Commission does not operate from an island. The law itself requires consultation with Supervising Agencies, the GOCCs themselves and other Stakeholders not as a mere procedural requirement but in recognition of the collective wisdom that may be drawn from past experiences and different vantage points. Thus inter-agency coordination is key to coming up with well-thought out policies and programs. It will also ensure consistency with the President’s social contract with the Filipino people as well as the Medium Term Philippine Development Plan.

Second, we always remind each other in the Commission that we shall not ask of the GOCCs anything that we ourselves cannot do. For example, we have mandated a “no gift policy” in GOCCs but we made sure we were the first to adopt such policy to prove that we “walk the talk”. Also, as the law requires GOCCs to come up with Strategy Maps and Performance Scorecards, we at the Commission have also undergone the process with the ICD and developed our own.

Third, Chairman Villanueva also constantly reminds us that while the GCG has been endowed with what has been termed by some as “awesome powers,” our frame of mind vis-à-vis Supervising Agencies and the GOCCs should always be – *How can we be of Service, of Help, of Support, to you in your Quest for Good Governance and National Development?*

Last but not the least, successful implementation of R.A. No. 10149 is possible only as long as we at the Commission consistently internalize and

espouse in our operations that which brought us together in the first place: the “*Tuwid na Daan*” and the “*Daylight*” policy of President Benigno S. Aquino III.

On behalf of the Commission, I wish to extend our gratitude to the members of the audience for their indulgence, and to Corporate Governance Asia for giving us this opportunity to share the Commission’s vision and experience on public corporate governance.

Thank you very much and good day.

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