



**GCG MEMORANDUM CIRCULAR No. 2012-09 (THIRD ISSUE)**

**SUBJECT : THE CHIEF EXECUTIVE OFFICER (CEO)**

**DATE : 8 SEPTEMBER 2014**

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**I. DEFINITIONS, DOCTRINES AND PRINCIPLES**

**1. DEFINITION OF "CHIEF EXECUTIVE OFFICER"**

Section 3(g) of the "GOCC Governance Act of 2011" (R.A. No. 10149) defines the "**CHIEF EXECUTIVE OFFICER (CEO)**" as "**the highest ranking executive**, who could be the President or the General Manager, Chairman or the Administrator of a GOCC."<sup>1</sup> On the other hand, Section 18 of R.A. No. 10149 refers to the CEO as "**the highest-ranking officer provided in the charters of the GOCCs.**"<sup>2</sup>

**2. APPOINTIVE POWER AND TERM OF OFFICE OF CEOs UNDER R.A. No. 10149**

Section 18 establishes the principle that the CEO of every GOCC covered by R.A. No. 10149 "shall be elected annually by the members of the Board from among its ranks," which means that a would-be CEO must first have been qualified under the Fit and Proper Rule, and appointed by the President of the Philippines into the Governing Board of the GOCC, and only thereafter will he/she be qualified to be elected as the CEO of the company.

In addition, Section 17 of 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 Director shall be for one (1) year, unless sooner removed for cause," which means that necessarily the maximum term of office of every CEO coincides with his/her remaining a member of the Governing Board, thus:

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***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: Provided, however, That the incumbent CEOs and appointive members of the Board shall continue in office until the successor have been appointed by the President.***<sup>3</sup>

Consequently, all provisions to the contrary in the charters of Chartered GOCCs, or in the Articles of Incorporation (AOI) and/or By-laws of Nonchartered GOCCs, are deemed amended by Sections 17 and 18 of R.A. No. 10149 in that:

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<sup>1</sup>Emphasis supplied.

<sup>2</sup>Emphasis supplied.

<sup>3</sup>Emphasis supplied.

- (a) In spite of their provisions that the CEO shall be appointed by the President of the Philippines, the CEO of every GOCC that is covered by R.A. No. 10149, shall be elected by the members of the Governing Board from among their ranks;
- (b) In the case of provisions where the appointment by the President of the CEO makes the latter an *ex officio* Member of the Governing Board, under R.A. No. 10149 *ipso jure* such *ex officio* position has been converted into an appointive position;
- (c) In case of provisions where the CEO is appointed by the President of the Philippines without being entitled to become a member of the Governing Board, it shall mean that henceforth the CEO must be nominated by the Governing Board from among their ranks, without adding to the number of the membership of the Board; and
- (d) Notwithstanding the provisions granting the CEO a fixed term of office, the CEO of every GOCC covered by R.A. No. 10149 has a term of office that coincides with his/her term of office as a member of the Governing Board, unless sooner removed by the Board for cause.

### **3. GOVERNANCE PRINCIPLE APPLICABLE TO CEOs UNDER R.A. No. 10149**

In addition to the *Ex Officio* Members having been nominated by the President of the Philippines to respective Governing Boards of GOCCs, under Section 15 of R.A. No. 10149, all "Appointive Director[s] shall be appointed by the President of the Philippines from a shortlist prepared by the GCG."

In turn, under Section 18 of R.A. No. 10149, "The CEO or the highest-ranking officer provided in the charters of the GOCCs, shall be elected annually by the members of the Board from among its ranks."

Finally, under Section 19 of R.A. No. 10149, among the fiduciary duties imposed on the Governing Boards is 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."

Such configuration under R.A. No. 10149 is meant to institutionalize within the GOCC Sector the underlying public governance principle that "*The Governing Board of every GOCC is responsible to the State and its Stakeholders; while Management, headed by the CEO, is responsible to the Governing Board.*"

Consequently, by the process of mandating that the CEO must be elected by the members of the Governing Board from among their ranks, it ensures that Management is accountable to the Governing Board.

In addition, Section 18 of R.A. 10149 provides in clear terms that "The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause."