



GCG MEMORANDUM CIRCULAR NO. 2015 – 01

**SUBJECT : GUIDELINES FOR THE CREATION OF GOCCS
AND RELATED CORPORATIONS**

DATE : 08 APRIL 2015

I. PURPOSE AND LEGAL AUTHORITY

This Memorandum Circular covers the underlying principles, policies and procedural guidelines for the creation of Nonchartered GOCCs or Related Corporations pursuant to Section 27 of the "GOCC Governance Act of 2011" (R.A. No. 10149), which states:

SEC. 27. Requisites for the Creation of a New GOCC or Related Corporation under The Corporation Code. – A government agency seeking to establish a GOCC or a Related Corporation under 'The Corporation Code of the Philippines' shall submit its proposal to the GCG for review and recommendation to H.E. the President for approval before registering the same with the Securities and Exchange Commission (SEC). The SEC shall not register the articles of incorporation and bylaws of a proposed GOCC or a Related Corporation, unless the application for registration is accompanied by an endorsement from the GCG stating that the President has approved the same.

Under Sec. 3 (w) and (a) of R.A. No. 10149, a "Related Corporation refers to a subsidiary or affiliate of a GOCC," and that an "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."

II. CREATION OF NONCHARTERED GOCCs

1. COVERAGE. – This Circular shall cover the creation of Nonchartered GOCCs through the Securities and Exchange Commission (SEC) pursuant to the provisions of the Corporation Code.

1.1. Proponent. – The following may initiate the proposal to establish a Nonchartered GOCC:

- (a) National Government Agencies (NGAs);
- (b) Local Government Units (LGUs)
- (c) GOCCs, either Chartered or Nonchartered;
- (d) The Governance Commission, on its own initiative, when the expediency of public service may require it.

1.2. **Classification of Nonchartered GOCCs.** – GOCCs may be created either as stock or non-stock, and may be owned directly or indirectly by the National Government or LGU, or indirectly through another GOCC.

- (a) A Stock GOCC is one where the government owns majority (i.e. more than 50%) of the corporation's outstanding capital stock.
- (b) A Non-Stock GOCC is any GOCC created at the behest of the NGA or LGU to undertake governmental functions and controlled by the government through its members.

2. **STATE OWNERSHIP POLICY.** – In reviewing proposals to create a Nonchartered GOCC, the Governance Commission shall ensure that:

- (a) The functions of the proposed GOCC do not duplicate or unnecessarily overlap with existing functions in the government;
- (b) The mandate of the proposed GOCC is consistent with the Philippine Development Plan;
- (c) The purpose of the proposed GOCC is not adequately served by the private sector;
- (d) The nature of operation of the proposed GOCC:
 - when it is a Stock GOCC, is primarily commercial with a clear value proposition and should serve public interests; and
 - when it is a Non-Stock GOCC, the eleemosynary purpose is pursuant to the performance of a governmental function or a mandate of the proponent;

3. **MODES OF CREATION.** – Nonchartered GOCCs may be created through the following modes:

- (a) **CORPORATIZATION** of an existing government agency;
- (b) **CREATION** of a new corporate entity;
- (c) **SPIN-OFF**, where an existing GOCC's mandate is segregated, resulting in the creation of a new corporate entity, which may be a subsidiary or an entirely independent corporation of the GOCC; and
- (d) **ACQUISITION** of the controlling interest in a private corporation.

4. **PROCEDURE FOR REVIEW, RECOMMENDATION AND APPROVAL**

4.1. **Documentary Requirements.** – Regardless of the mode of creation, the proposal to establish a GOCC shall include the following common requirements:

- (a) Feasibility study, which shall contain, as a minimum, the business model, capitalization, 5-Year Projected Financial Statements, market/industry study, and if applicable, the exit plan for the NGA, LGU or GOCC;
- (b) Endorsement from the proposed Supervising Agency, in the case where the proponent is an LGU there must be a favorable endorsement of the establishment of a GOCC from the Department of Interior and Local Government (DILG);

- (c) Executive Summary and relevant supporting documents on the proceedings undertaken for genuine and effective Stakeholders consultations;
- (d) Endorsement from Stakeholders affected, including the LGUs where the proposed GOCC will be operating/situated, if applicable;
- (e) Proposed Articles of Incorporation and By-Laws (not applicable to Acquisition of GOCC);
- (f) Due Diligence Report on investors, co-incorporators, or co-stockholders from the private sector, if applicable; and
- (g) Any other documentation showing that the Proposed GOCC complies with State Ownership Policy pursuant to R.A. No. 10149, the "*Ownership and Operations Manual for GOCCs*" (GCG MC No. 2012-06), and this Circular.

4.1.1. **Additional Requirements for Corporatization.** – Proposals for Corporatization shall also include:

- (a) 5-year historical audited financial statements, or for the period of existence of the government agency if less than 5 years;
- (b) Updated version of the government agency's charter incorporating all subsequent amendments, and supported by relevant executive issuances and regulations and the original version of its charter and the amendments;
- (c) The plan for transferring assets and obligations to the Proposed GOCC, if applicable; and
- (d) Proposed Executive Order (EO) approving the corporatization of the functions and mandate of the government agency, pursuant to the delegated authority of the President of the Philippines under R.A. No. 10149 to create GOCCs and under the Administrative Code of 1987 (E.O. No. 292) to reorganize the Executive Branch of Government.

4.1.2. **Additional Requirements for Spin-Off.** – The proposal for spin-off shall also include:

- (a) For Chartered GOCCs, Proposed EO transferring the functions to the Proposed GOCC pursuant to the delegated authority of the President of the Philippines under R.A. No. 10149 to create GOCCs and under the Administrative Code of 1987 (E.O. No. 292) to reorganize the Executive Branch of Government;
- (b) For Nonchartered GOCCs, proposed amendments to the Articles of Incorporation of the existing GOCC; and
- (c) Change Management Plan for the orderly and efficient transfer of the functions, services, assets and obligations from the existing GOCC to the Proposed GOCC.

4.1.3. **Additional Requirements for Acquisition.** – The proposal for Acquisition shall also include:

- (a) Certified true copies of the latest: Articles of Incorporation, By-laws and General Information Sheet;
- (b) Due Diligence Report on the private entity, which should also include the list of stockholders with their respective subscribed and paid-up capital certified under oath by the Corporate Secretary, and notarized Secretary's Certificate or equivalent that there is no pending case of intra-corporate dispute or other legal controversies;
- (c) 5-year audited financial statements, or for the period of existence of the private entity if less than 5 years; and
- (d) Current market valuation of listed shares to be acquired, or the appraised value of unlisted shares to be issued by a reputable auditing firm or an SEC-accredited appraiser; and the proposed purchase price of the shares to be acquired.

4.2. **Technical Working Group (TWG).** – The Governance Commission shall review the proposal and convene a TWG meeting within thirty (30) working days from the complete submission of the requirements above.

The TWG shall consist of senior officers from GCG and the Proponent, who shall clarify all issues and make the necessary adjustments in order to comply with the State Ownership Policy and other relevant laws, rules and regulations from the time the TWG is convened. The representatives of GCG may require from the Proponent the submission of additional documents or information of such reasonable period as provided for in the notice. Failure to timely provide such additional documents or information shall result in the return of the proposal, without prejudice to resubmission with the additional documents or information.

Matters that cannot be agreed upon shall be elevated to the Governance Commission and if necessary, the various positions shall be discussed with the Head or Governing Board of the Proponent, as the case may be.

4.3. **Formal Consultations.** – The establishment of the Proposed GOCC shall be evaluated and pursued in close coordination with the Supervising Agency, which shall exercise supervision over said GOCC for purposes of policy and program coordination. In addition, the evaluations relative to the establishment of the Proposed GOCC shall also be in close coordination with all the stakeholders affected.

4.4. **Recommendation.** – The Governance Commission shall decide on the Proposal only from the time it deliberates the matter with the Head or authorized representative/s of the Proponent; thereafter, the Proponent shall be informed of whether:

- (a) The proposal has been recommended for approval in a formal Memorandum for the President of the Philippines; or
- (b) The proposal cannot be recommended since it fails to comply with the State Ownership Policy and/or other relevant laws, rules and regulations.

5. **ENDORSEMENT AND REGISTRATION WITH THE SEC.** – If the proposal to establish the GOCC based on the recommendation of GCG is approved by the President, the Governance Commission shall inform the GOCC and/or the Proponent in writing and provide an endorsement for the establishment of the GOCC stating that the President has approved the same. The GOCC shall include the endorsement in their application for registration with the SEC.

The GOCC shall furnish the GCG with a copy of all the documents pertaining to the registration with the SEC, including the General Information Sheet (GIS) and SEC Certificate of Registration, among others.

II. **CREATION OF A RELATED CORPORATION**

1. **APPLICABILITY OF THE NEDA'S REVISED JV GUIDELINES.** – Since a JV Company falls within the legal definition of a Related Corporation, this Circular shall be supplementary to the provisions of the *NEDA Revised Guidelines and Procedures for Entering Joint Venture (JV) Agreements Between Government and Private Entities* (NEDA JV Guidelines) dated 03 May 2013.

Section 7.4 of the NEDA JV Guidelines requires that all JV proposals that involve the establishment of a JV Corporation/Company to be submitted to GCG for review and recommendation to the President of the Philippines through the NEDA Board Investment Coordination Committee (ICC).

2. **PARTICULAR GCG PROCEDURE FOR REVIEW AND APPROVAL.** – A government agency seeking to establish a JV Company shall submit to GCG, for review and recommendation to the President of the Philippines through the NEDA, shall comply with the following requirements:

2.1. **Documentary Requirements.** – The Governance Commission shall review proposals to establish the JV Company upon complete submission of the following requirements:

2.1.1. JV Agreement, which should clearly reflect the following:

- (a) Clearly defined business objectives;
- (b) Specified degree of participation and the management roles of each party in the JV activity;
- (c) Defined contribution of capital and ownership rights to property;
- (d) Specified division of the profits, risks and losses;
- (e) Identified dispute mechanism to avoid management impasses that may produce deadlock or litigation;
- (f) Specified termination/liquidation of the JV Company and indicate buy-out provisions;
- (g) Specified confidentiality terms; and
- (h) Stipulated indemnification mechanisms.

2.1.2. Feasibility study showing, as a minimum, the business model, 5- year projected financial statements, market/industry study, and if applicable, exit plan for the proponent government agency.

2.1.3. Proposed Articles of Incorporations and By-Laws.

2.1.4. Projected Financial Statements of the proposed JV Company for 5 years beginning from the target date of incorporation, showing, among other things:

- (a) Capital investments of the Parent Company;
- (b) Capital structure of the company at incorporation;
- (c) Commitments for future cash infusions into the company;
- (d) Working fund requirements for the programs/project;
- (e) Amounts to be funded from borrowings, if any;
- (f) Contingent liabilities/subsidies from the NGA and/or LGUs; and
- (g) Projections on cash flow and profitability during the life of the programs/projects.

3. **TECHNICAL WORKING GROUP.** – The Governance Commission shall review the proposal and convene a TWG meeting within thirty (30) working days from the complete submission of the requirements above.

The TWG shall consist of senior officers from GCG and the Proponent, who shall clarify all issues and make the necessary adjustments in order to comply with the State Ownership Policy and other relevant laws, rules and regulations from the time the TWG is convened. The representatives of GCG may require from the Proponent the submission of additional documents or information of such reasonable period as provided for in the notice. Failure to timely provide such additional documents or information shall result in the return of the proposal, without prejudice to resubmission with the additional documents or information.

Matters that cannot be agreed upon shall be elevated to the Governance Commission and if necessary, the various positions shall be discussed with the Head or Governing Board of the Proponent, as the case may be.

4. **RECOMMENDATION.** – The Governance Commission shall decide only from the time it deliberates on the same with the Head of Agency of the proponent government agency. Thereafter, the proponent government agency shall be informed through a formal written notice of whether:

- (a) The proposal has been recommended for approval in a formal Memorandum for the President of the Philippines through the NEDA Board ICC; or
- (b) The proposal cannot be recommended since it fails to comply with the policies and principles herein, the NEDA JV Guidelines, and/or other applicable laws, rules and regulations.

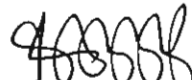
5. **ENDORSEMENT AND REGISTRATION WITH THE SEC.** – If the proposal to establish the JV Company based on the recommendation of GCG and the NEDA Board ICC is approved, the Governance Commission shall inform the proponent government agency in writing and provide an endorsement for the establishment of the JV Company stating that the President has approved the same, which the proponent government agency and the Private Sector Partner shall include in their application for registration with the SEC.

III. EFFECTIVITY

This Circular shall take effect immediately upon its publication in a newspaper of general circulation and on the Governance Commission's website at www.gcg.gov.ph.



CESAR L. VILLANUEVA
Chairman




CESAR V. PURISIMA
DOF Secretary



MA. ANGELA E. IGNACIO
Commissioner

027280



FLORENCIO B. ABAD
DBM Secretary



RAINIER B. BUTALID
Commissioner

