



## GCG MEMORANDUM CIRCULAR NO. 2012 - 08 (RE- ISSUED)

**SUBJECT : ALTERNATES FOR EX OFFICIO MEMBERS OF THE GOCC GOVERNING BOARDS**

**DATE : 04 JANUARY 2016**

### **I. DEFINITIONS, DOCTRINE AND PRINCIPLES**

#### **1. DEFINITION OF *EX OFFICIO* MEMBERS OF THE BOARD**

Section 3(i) of Republic Act No. 10149, otherwise known as the “GOCC Governance Act of 2011” (R.A. 10149), defines an “*Ex Officio Board Member*” as referring “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.”

#### **2. DEFINITION OF “ALTERNATE”**

No formal definition of “*Alternate*” appears in R.A. No. 10149. However, Executive Order No. 24 (s. 2011)<sup>1</sup> defines an alternate as “an individual who is officially designated by an *Ex-Officio* Board member to exercise the powers and perform the functions of the latter in the event of his/her absence or incapacity when allowed by law”.<sup>2</sup>

#### **3. R. A. NO. 10149 RULE ON ALTERNATES FOR EX OFFICIO BOARD MEMBERS**

Section 14 of R.A. 10149 provides a rule on *Alternates for Ex Officio* Board Members in the Boards of Directors/Trustees of Government-Owned- or-Controlled Corporations (GOCCs), thus:

**Sec. 14. *Ex Officio Alternates.*** – The *ex officio* members of the GOCC may designate their respective *alternates who shall be the officials next in rank to them* and whose acts shall be considered the acts of their principals.

The phrase “*alternates who shall be the officials next in rank to them*” has been interpreted in certain quarters in a restrictive sense, in that if the *Ex Officio* Director is the Secretary of an Executive Department, then he/she could only appoint an Undersecretary as his/her alternate in the Governing Board of the GOCC where he/she sits as an *Ex Officio* Member of the Board.

<sup>1</sup> Entitled “Prescribing Rules to Govern the Compensation of Members of the Board of Directors/Trustees in Government-Owned or Controlled Corporations, Including Government Financial Institutions.”

<sup>2</sup> Sec.2(g), E.O. N. 24 (s.2011).

**4. SECTION 14 OF R.A. NO. 10149 IS AN ENABLING, NOT A RESTRICTING NOR LIMITING, PROVISION**

- 4.1. Section 14 of R.A. 10149 established in statutory form a principle of corporate governance that is peculiar in the realm of the GOCC Sector covered by the Act, in that it considers the exigencies of public service where often, the designated *Ex Officio* Board Members are Secretaries of Departments of the Executive Branch to which the GOCCs are attached to; that often, such *Ex Officio* Directors, who are required to concentrate their time to the primary concerns of their departments, would not have the quality time to devote to their duties and responsibilities as *Ex Officio* members of the Governing Boards of GOCCs under their charge — hence, the need to rely upon responsible alternates to fulfill their duties and responsibilities as *Ex Officio* Board Members.
- 4.2. The Governance Commission has interpreted the provisions of Section 14 as an enabling provision — setting as it does an exemplary principle in public corporate governance, to mean the allowance of the appointment of an alternate by an *ex officio* member in a GOCC Board, “whose acts shall be considered the acts of their principals”. The Commission does not consider the language under Section 14 as a restrictive clause to limit the choice of alternates to only the next-in-rank.
- 4.3. Such interpretation by the GCG has been officially concurred with by the Department of Justice (DOJ) in their opinion dated 02 May 2012. (DOJ Opinion No. 24, s. 2012), which in part ruled:

The foregoing considered, this Department is inclined to concur with the position of the Commission.

x x x

Sec. 14 of the law specifically allows the *ex officio* members of the GOCC to name alternates . . .

It is apparent from the aforementioned principles and provision of law that *ex officio* members of the GOCC may delegate alternates who can act on behalf of the principal. Therefore, it behooves to mention that the concept of who could be a next-in-rank alternate should not be limited to designation of Undersecretaries. The measure of a next-in-rank designation should be whether an official lower in rank regularly confers with the principal and whether the said official performs functions relative to matters which fall within the domain of the GOCC.

x x x

A copy of which is attached hereto and made an integral part of this memorandum.

**5. A DULY-DESIGNATED ALTERNATE OF AN *EX OFFICIO* BOARD MEMBER ACTS WITH THE SAME LEGAL EFFECT AS THE PRINCIPAL DIRECTOR**

5.1. Section 14 of R.A. No. 10149 provides that when an Alternate has been duly designated by an *Ex Officio* Board Member, then the acts of such Alternate "shall be considered the acts of [the Principal Director]."

5.2. In an earlier DOJ Opinion (DOJ Opinion No. 037, s.2011), the Secretary of Justice had opined:

"x x x Moreover, the exigency of the service requires that the alternate, whose designation is prescribed by law, be allowed to act for the principal given in the latter's multifarious functions, duties and responsibilities.

"Under settled principles of administrative law, it is said that where a public officer is authorized to appoint a deputy, the authority of that deputy (the alternate in this case), unless otherwise limited, is commensurate with that of the officer himself, and, in the absence of any showing to the contrary, will be so presumed. It has been held that a duly designated deputy may do any act that his principal might do; he cannot have less power than the principal. Corollary to this is the legal principle that the agent, alternate or representative cannot have a better right than his principal; and all laws, rules, prohibitions or restrictions that cover the principal member apply with equal force to his representative."<sup>3</sup>

**II. RULES ON DESIGNATION OF ALTERNATES**

**6. PERSONS AUTHORIZED TO DESIGNATE ALTERNATES:**

Only *Ex Officio* Board Members (the "Principal Directors") are authorized to designate Alternates; Appointive Directors and *Ex Officio* Alternates are not authorized to designate Alternates.

**7. QUALIFICATIONS OF PERSONS TO BE DESIGNATED AS ALTERNATES:**

Any *Ex Officio* Board Member (the "Principal Director") may designate as an Alternate to the Governing Board of the GOCC to which he/she is an *Ex Officio* Director only the following:

- (a) An Officer of the Department or Agency to which the GOCC is attached who shall have a rank that is not lower than the equivalent of Director III;
- (b) The Alternate must not already be a member of the Governing Board of the GOCC to which he/she is being designated as an Alternate; and
- (c) The Alternate reports directly to the Principal Director on the matters covered by the GOCC.

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<sup>3</sup> Quoted in DOJ Opinion No. 24, s.2012; emphasis supplied.

#### **8. FORM OF THE DESIGNATION/REVOCAION OF ALTERNATES:**

The Principal Director shall designate a qualified Alternate through a written notice to the Corporate Secretary (or equivalent officer) of the GOCC concerned.

The Principal Director may also revoke the designation of the Alternate at any time, provided it shall be effective only upon written notice to the Corporate Secretary of the GOCC concerned.

#### **9. PROHIBITION ON REPRESENTATIVES**

For attendance purposes, any person other than the duly designated Alternate/s of the Ex Officio Board Member shall not be recognized as an official representative.

#### **10. NUMBER OF ALTERNATES**

An Ex Officio Board Member may only designate a maximum of three (3) Alternates.

#### **11. POWER AND TERM OF THE ALTERNATE:**

Unless specifically limited in the letter of designation, the duly-designated Alternate may act and vote with the same power and legal effect as that of the Principal Director, and during the entire period that the Principal Director is an Ex Officio Board Member.

#### **12. ATTENDANCE OF THE ALTERNATE:**

Sections 3.3.3 (a), (b), (c), (d) of GCG Memorandum Circular No. 2014-03 (Re-Issued) shall apply in the computation of attendance of a duly-designated Alternate.

#### **13. WHEN ALTERNATE CEASES TO ACT WITH AUTHORITY:**

A duly-designated Alternate shall cease to act with the power and legal authority of the Principal Director upon:

- (a) The proper revocation of his/her designation by the Principal Director;
- (b) When the Principal Director has ceased to be a member of the Governing Board of the GOCC concerned;
- (c) Upon the death, civil interdiction, or the resignation of the Principal Director or the Alternate himself/herself from the public service.

In every instance that the Principal Director attends a meeting of the Governing Board, the Alternate's power to represent the Principal Director is deemed suspended for that particular meeting.

### **III. REPEALING CLAUSE**

All other GCG orders, circulars, issuances, and decisions, as well as Board

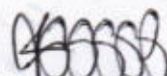


resolutions, or parts of the foregoing, which are inconsistent with this Memorandum Circular are hereby repealed or modified accordingly.


#### IV. EFFECTIVITY


This Circular shall take effect immediately upon its publication in the Commission's website at [www.gcg.gov.ph](http://www.gcg.gov.ph).

  
**CESAR L. VILLANUEVA**  
*Chairman*

  
**CESAR V. PURISIMA**  
**DOF Secretary**  
**029156**

  
**MA. ANGELA E. IGNACIO**  
*Commissioner*

  
**FLORENCIO B. ABAD**  
*DBM Secretary*

  
**RAINIER B. BUTALID**  
*Commissioner*

