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Office of the President of the Philippines
GOVERNANCE COMMISSION
FOR GOVERNMENT OWNED OR CONTROLLED CORPORATIONS
3/F, Citibank Center, 8741 Paseo De Roxas, Makati City, Philippines 1226



GCG MEMORANDUM CIRCULAR NO. 2012-04 (FIFTH ISSUE)

SUBJECT : NOMINATION AND APPOINTMENT OF APPOINTIVE MEMBERS OF THE BOARD OF DIRECTORS/TRUSTEES OF GOCCs, SUBSIDIARIES AND AFFILIATES

DATE : SEP 18 2018

1. APPLICABLE LEGAL PROVISIONS

1.1. **COVERAGE OF THE LAW.** – Section 4 of Republic Act No. 10149 (The GOCC Governance Act of 2011) provides that “This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions; *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG.”

1.2. **DEFINITION OF “GOCC”.** – Section 3(o) of R.A. No. 10149 defines “Government Owned or -Controlled Corporation (GOCC)” as “any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock.” It also provides that the term “GOCC” includes Government Instrumentalities with Corporate Powers (GICP), Government Corporate Entities (GCE) and Government Financial Institutions (GFI).

1.2.1. Section 3(z) defines “***Subsidiary***” as “a corporation where at least a majority of the outstanding capital stock is owned or controlled, directly or indirectly, through one or more intermediaries, by the GOCC.”

Subsidiaries therefore fall within the definition of “GOCCs” and are also expressly stated within the coverage of R.A. No. 10149, Section 4 thereof.

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- 1.2.2. Section 3(a) defines "**Affiliate**" as "a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned or controlled, directly, by the GOCC."
- 1.3. **APPOINTIVE DIRECTORS.** – Section 15 of R.A. No. 10149 provides that "An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG," which does not distinguish whether the Appointive Director is with the GOCC, a Subsidiary, or an Affiliate.
- 1.3.1. Section 3(b) defines "**Appointive Director**" as:
- "(1) In the case of chartered GOCCs, members of its Board of Directors/Trustees who are not *Ex Officio* members thereof;
- "(2) In the case of non-chartered GOCCs, members of its Board of Directors/Trustees whom the State is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and
- "(3) In the case of subsidiaries and affiliates, members of its Board of Directors/Trustees whom the GOCC is entitled to nominate to the extent of its percentage shareholdings in such subsidiary or affiliate."
- 1.3.2. In non-chartered GOCCs, all members of the Board are considered Appointive Directors, unless otherwise provided by law or by an Executive Order issued by the President.
- 1.3.3. GOCC Representatives in GOCC Governing Boards are considered Appointive Directors subject to the selection and nomination process of the GCG.
- 1.3.4. Pursuant to Section 49 of Book IV (Executive Branch), Chapter 10 of the Administrative Code of 1987, an Appointive Director may, in addition to his primary position, hold not more than two (2) positions in the government and government corporations.
- In accordance with GCG M.C. No. 2012-09 (Re-Issued), the Chief Executive Officer (CEO) of a GOCC occupies two (2) positions: as an Appointive Director and as CEO. As such, the CEO may hold only one (1) other Appointive Director seat in another GOCC.
- 1.4. **ALL CEO POSITIONS DEEMED TO CONSTITUTE APPOINTIVE DIRECTOR POSITION.** – Pursuant to the following provisions of R.A. No. 10149, thus:
- (a) Section 17: "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 successors have been appointed by the President;" and

- (b) Section 18: "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 rank;"

the legal effect is that all CEO positions in GOCCs covered by R.A. No. 10149, have all become part of the Appointive Members of the Governing Board, who may be "subject to the disciplinary powers of the Board and may be removed by the Board for cause," under the clear terms of Section 18 thereof, and therefore sit in the Governing Board having the same rights, privileges and inhibitions as all other Appointive Members of the Governing Board.

- 1.5. **TERM OF OFFICE.** – Under GCG M.C. No. 2012-03,¹ the GCG has formally taken cognizance of the fact that Section 17 of R.A. No. 10149 has provided for the "Term of Office" of Appointive Directors in GOCCs to officially begin on 01 July of each year and ending on 30 June of the following year, thus:

- (a) "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 x x x"
- (b) "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 30 June 2011, unless sooner replaced by the President x x x"

1.5.1. Since Affiliates are not covered within the term "GOCCs" and do not fall within the defined coverage of R.A. No. 10149 per Section 4 thereof, they are not bound by the provisions of Section 17 on the "Term of Office" of Appointive Directors.

1.5.2. Since Economic Zone Authorities (EZAs) and Research Institutions (RIs) are expressly excluded from the defined coverage under Section 4 of R.A. No. 10149, they are also not bound by the provisions of Section 17 on the "Term of Office" of Appointive Directors.

2. LEVELS OF GOCCs

- 2.1. For purposes of administering the nomination, appointment or election processes for Appointive Directors in GOCCs, Subsidiaries, EZAs and RIs, the following levels are hereby recognized:

¹ Status of Holdover and Acting Appointive Directors/trustees in GOCC Boards and Requiring the Submission of Information on Their Respective Qualifications.

- 2.1.1. **GOCCs under GCG Annex A:** Attached herewith is Annex A² which classifies into sectors the GOCCs constituting the covered “GOCCs, GICPs/GCEs, and government financial institutions [GFIs], and their subsidiaries,” referred to in Section 4 of the Act.

The listing in Annex A shall be without prejudice to the power of GCG to update and reclassify them further as the need arises.

- 2.1.2. **GOCC Subsidiaries:** All subsidiaries of GOCCs which fall under the definition under Section 3(z) of R.A. No. 10149 which are not listed in GCG Annex A shall hereinafter be referred to as “Subsidiaries.”
- 2.1.3. **GOCC Affiliates.** All affiliates of GOCCs which fall under the definition under Section 3(a) of R.A. No. 10149 shall hereinafter be referred to as “Affiliates.”
- 2.1.4. **Economic Zone Authorities (EZAs).** The term “*Economic Zone Authorities*” referred to in Section 4 of R.A. No. 10149 as being excluded from the coverage of the Act shall cover only those having a charter which provides the primary purpose of which is to act as an economic zone authority, such as the Philippine Economic Zone Authority (PEZA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of Bataan (AFAB), Cagayan Economic Zone Authority (CEZA), Subic Bay Metropolitan Authority (SBMA) and Zamboanga City Special Economic Zone Authority (ZAMBOECOZONE).

All other chartered GOCCs where regulation of zone authorities is just an additional function, such as the Bases Conversion and Development Authority (BCDA), or non-chartered GOCCs organized and registered with the Securities and Exchange Commission (SEC), which under their articles of incorporation, are to engage in the regulation of economic zones, such as the Clark Development Corporation (CDC), John Hay Management Corporation (JHMC), and Poro Point Management Corporation (PPMC), are within the full coverage of R.A. No. 10149, not falling within the technical term of authorities.

- 2.1.5. **Research Institutions.** The term “*Research Institutions*” referred to in Sections 4 of R.A. No. 10149 as being excluded from the coverage of the Act, shall cover only those having a charter which provides the primary purpose of which is to act as a research institution, such as Philippine Rice Research Institute (PRRI) and the Philippine Institute for Development Studies (PIDS).

² The list may be downloaded from our website, www.gcg.gov.ph.

All other chartered GOCCs where engaging in research constitutes merely an additional function of the GOCC, such as the Development Academy of the Philippines (DAP), or non-chartered GOCCs organized under the articles of incorporation to engage into institutional research, are within the full coverage of R.A. No. 10149.

3. NOMINATION AND APPOINTMENT OF APPOINTIVE DIRECTORS OF GOCCs AND SUBSIDIARIES

3.1. FROM WHOM FORMAL NOMINATION SHALL BE SOLICITED

3.1.1. **GOCCs UNDER GCG ANNEX A:** GCG shall formally solicit nominations for all the positions of Appointive Directors in each of the GOCCs, with indications as to who are being endorsed to the positions of Chairman and CEO, from the following:

- (a) The Office of the President (OP) through the Office of the Executive Secretary (OES) or the Presidential Management Staff (PMS);
- (b) The Department or Government Agency to which the GOCC is attached;
- (c) Board of Directors/Trustees of the Parent GOCC, when applicable;
- (d) Sectoral organizations for Appointive Members who are designated to represent such sector, when applicable; and
- (e) Stakeholder groups affected by the GOCC.

3.1.2. **Subsidiaries:** GCG shall formally solicit nominations for all the positions of Appointive Directors in each of the GOCCs, with indications as to who are being endorsed to the positions of Chairman and CEO, from the following:

- (a) The Office of the President (OP) through the Office of the Executive Secretary (OES) or the Presidential Management Staff (PMS);
- (b) The Department or Government Agency to which the GOCC is attached;
- (c) Board of Directors/Trustees of the Parent GOCC.

3.2. SUBMISSIONS REQUIRED FOR NOMINATIONS

3.2.1. All nominations received by the GCG shall be certified by the following:

- 3.2.1.1. The OES or the PMS for nominations from the OP;
- 3.2.1.2. The Head of Agency for nominations from the Department or Government Agency to which the GOCC is attached;
- 3.2.1.3. The GOCC Board of Directors/Trustees through a Board Resolution for nominations from the Parent GOCC of a subsidiary;

3.2.1.4. The Head of Sectoral/Stakeholder Group for nominations from Sectoral/Stakeholder Groups.

3.2.2. Nominee(s) shall submit to the Governance Commission the following documentary requirements:

- Appointive Director Data Form (ADDF) which shall be accomplished through the Integrated Corporate Reporting System (ICRS) portal. A notarized copy of the same shall be submitted to the GCG;
- Clearances from the: Civil Service Commission (CSC), Office of the Ombudsman (OMB), Sandiganbayan (SB) and the National Bureau of Investigation (NBI);
- If the nominee has pending case/s, case files such as Executive Summary, Complaint-Affidavit, Counter-Affidavit and other related documents or Certification that a particular nominee has not received any Order from the Court or Office to submit an Answer or Counter-Affidavit;
- Authorization to Secure Documents in Relation to Case(s) Filed Against the Nominee, if applicable;
- Recommendation/Endorsement Letter from the Sectoral Group which the nominee will represent;
- Other supplementary documents that may be necessary in evaluating the qualifications/disqualifications of the nominee, such as but not limited to the following:
 - (1) Affidavit of No Relation;
 - (2) Affidavit of Undertaking;
 - (3) Oath of Allegiance; and
 - (4) School Diploma and/or Transcript of Records.

3.3. **INDIVIDUAL APPLICATIONS AND OTHER ENDORSEMENTS.** The foregoing provisions are without prejudice to GCG processing individual applications received from interested candidates, as well as nominations/endorsements received from other sectors, and imposing the same or similar documentary requirements as provided for above, subject to vetting with the Department/Government Agency and Parent GOCC, if applicable.

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4. **REAPPOINTMENT OF APPOINTIVE DIRECTORS IN THE GOCC AND SUBSIDIARIES.** An Appointive Director may be recommended for reappointment by the GCG only if he obtains a performance score of "Above Average" in the recently preceding Term of Office in accordance with Section 17 of R.A. No. 10149 and GCG M.C. No. 2014-03 (3rd Issue) or the "Performance Evaluation for Directors (PED)". In addition to the requirements provided under Section 3.2.3 of this Memorandum Circular, incumbent members of GOCC Governing Boards who are being recommended for reappointment are also required to submit the following to the GCG:

- 4.1. Certificate of Attendance to Public Corporate Governance Seminar; and
- 4.2. Certificate of Attendance to at least 75% of all board meetings conducted during his/her term.

5. **NOMINATION AND ELECTION OF APPOINTIVE DIRECTORS OF AFFILIATES**

5.1. **FROM WHOM FORMAL NOMINATION SHALL ORIGINATE**

- 5.1.1. Affiliates, not being within the coverage of R.A. No. 10149, continue to be governed by their articles of incorporation and by-laws, and consequently, the nomination of Appointive Directors to their Boards shall remain within the business judgment prerogative of the Board of Directors/Trustees of the parent or holding GOCCs.
- 5.1.2. In preparation for the annual stockholders' or members' meetings of the Affiliates at which the members of their Board are nominated and elected, the Board of Directors/Trustees of parent or holding GOCCs shall, through formal board resolutions, nominate candidates for the Appointive Directors for each Affiliate whom the parent or holding GOCC is entitled to nominate to the extent of its percentage shareholdings in such Affiliates.

5.2. **REPORT TO THE GCG.** – Within fifteen (15) days from the election of Appointive Directors in Affiliates, the Chairman of the Board of the parent or holding GOCC shall submit to the GCG the following:

- (a) The board resolution nominating their candidates;
- (b) Biographical write-ups or curriculum vitae for all the individuals nominated and elected into the Board of the Affiliate; and
- (c) Certification of the amounts of *per diem* and other benefits they are receiving as Appointive Directors of the Affiliate.

5.3. Non-submission of the reportorial requirement under Subsection 5.2 is considered a violation by the Board of Directors/Trustees of GCG M.C. No. 2012-07 or the Code of Corporate Governance.³

6. NOMINATION, APPOINTMENT OR ELECTION OF APPOINTIVE DIRECTORS OF EZAs AND RIs

6.1. Nominations and appointments for the seats subject to the selection and nomination process by the GCG in Economic Zone Authorities (EZAs) and Research Institutions (RIs) must conform to the guidelines provided under GCG M.C. No. 2014-01 on the *Nomination and Appointment in Economic Zone Authorities (EZAs) and Research Institutions (RIs)*.

7. **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.

8. **EFFECTIVITY CLAUSE.** – This circular shall take effect immediately upon its publication in the Governance Commission's website at www.gcg.gov.ph.

BY AUTHORITY OF THE COMMISSION:

SAMUEL G. DAGPIN JR.
Chairman


MICHAEL P. CLORIBEL
Commissioner


MARITES CRUZ-DORAL
Commissioner

³ Section 7(g) of GCG M.C. No. 2012-07 provides that one of the mandates of the Board of Directors is to "[c]omply with all reportorial requirements, as required in the Charter or Articles of Incorporation or By-Laws, as well as applicable laws, rules and regulations."