



## **GCG MEMORANDUM CIRCULAR NO. 2015 – 03**

**SUBJECT : GUIDELINES COVERING THE MERGER OR  
ABOLITION/DISSOLUTION OF GOCCS**

**DATE : 08 APRIL 2015**

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### **1. PURPOSE AND LEGAL AUTHORITY**

This Memorandum Circular covers the underlying principles, policies and procedures for the merger or abolition of GOCCs pursuant to Section 5(a) of the "GOCC Governance Act of 2011" (R.A. No. 10149), as well as the dissolution and liquidation resulting from abolition.

Under Section 5(a) of R.A. No. 10149, upon determination by the Governance Commission that it is to the best interest of the State that a GOCC should be merged or abolished, it shall:

- (i) Implement the . . . merger . . . of the GOCC, unless otherwise directed by the President; or
- (ii) Recommend to the President the abolition . . . of the GOCC, and upon approval of the President, implement such abolition . . . unless the President designates another agency to implement such abolition or privatization.

### **2. GUIDING PRINCIPLES**

2.1. In determining whether it shall recommend to the President of the Philippines whether to abolish a GOCC or merge two (2) or more GOCCs, the Governance Commission shall evaluate the GOCC/s guided by the following statutory principles:

- (a) The functions or purposes for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;
- (b) The GOCC's functions or purposes duplicate or unnecessarily overlap with the functions, programs, activities or projects already provided by a Government Agency;
- (c) The GOCC is not producing the desired outcomes, or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or not cost efficient and does not generate the level of social, physical and economic returns vis-à-vis the resource inputs;
- (d) The GOCC is in fact dormant or non-operational;
- (e) The GOCC is involved in activity best carried out by the private

sector; and

- (f) The functions, purpose or nature of operations of any group of GOCCs require consolidation under a holding company.

- 2.2. **PES and Consultation with GOCC Governing Board.** – The Governance Commission's evaluation of the performance and determination of the relevance of a GOCC shall be tied to the Performance Evaluation System (PES) institutionalized under GCG Memorandum Circular No. 2013-02 (Re-Issued). The results of the evaluation and determination of relevance of a GOCC shall be discussed with the Governing Board of the GOCC and of its parent GOCC, if any.
- 2.3. **Participation of the Head of the Supervising Agency.** – The pursuit of the merger or abolition of a GOCC shall be done with the participation of the Secretary or highest ranking official of the Supervising Agency to which the GOCC is attached.
- 2.4. **Coordination With Regulatory Agencies Involved.** – The merger or abolition of a GOCC shall be evaluated and pursued in coordination with the regulatory agencies which have jurisdiction over the GOCC, e.g., GFIs which are under the supervision of the Bangko Sentral ng Pilipinas (BSP), Nonchartered GOCCs which are also under the jurisdiction of the Securities and Exchange Commission (SEC) and GOCCs which are insurance companies under the jurisdiction of the Insurance Commission (IC).
- 2.5. **Coordination with Other Concerned Agencies.** – In addition to the concerned Regulatory Agencies, the merger or abolition of a GOCC shall also be evaluated and pursued in coordination with the Commission on Audit (COA), the Department of Finance (DOF), the Department of Budget and Management (DBM), the SEC, when applicable, and such other concerned agencies.
- 2.6. **Memorandum to the President.** – If after the above consultations the Governance Commission still determines that it is to the best interest of the State that the GOCC/s should be merged or abolished, the evaluation and findings of the Governance Commission, as well as the results of the above consultations, shall be contained in a Memorandum for the President of the Philippines recommending the merger or abolition, the manner by which to pursue the same, as well as the formal dissolution and liquidation of the GOCC in case of abolition.
- 2.7. **Approval of the President.** – The formal approval of the President of the Philippines of the recommendation of the merger or abolition of a GOCC shall be the legal authority for the Governance Commission to pursue the merger or abolition of such GOCC.
- 2.8. **Formation and Composition of the Technical Working Group (TWG).** – Upon the issuance of the President's approval of the merger or abolition of a GOCC, a TWG shall be formed to resolve all matters involving the implementation of the merger or abolition. The TWG shall be composed of the President/CEO of the concerned GOCC as well as other officers, and duly designated representatives from the Governance Commission, DOF,

DBM, COA, and when applicable, the SEC, with a rank not lower than that of a Director.

### 3. MERGER OF GOCCs

3.1. **Coverage of "Merger"**. – The term "merger" shall cover GOCCs whether Chartered or Nonchartered, and shall cover either of the following restructuring modes:

- (a) *De Jure* Merger refers to the process whereby one or more existing GOCC/s are absorbed by another GOCC which survives and continues the combined businesses of the absorbed GOCCs; and
- (b) *De Facto* Merger refers to the process whereby all or substantially all the assets and business enterprise of an existing GOCC are transferred to another GOCC, which continues the purpose, functions and programs of the transferring GOCC.

3.2. **Additional Guiding Standards in the Mergers of GOCCs**. – Nothing in this Circular shall be construed to preclude the Governance Commission from considering other guiding standards in recommending the merger of GOCCs, which may include, but is not limited to, the following:

- (a) Operational Efficiency;
- (b) Enhanced Market Power and Extensive Market Reach;
- (c) Increased Sources of Funds;
- (d) Access to New or Better Technology;
- (e) Access to and Enhancement of New Product Lines;
- (f) Widened Geographic Reach; and
- (g) Expanded Source of Management and Technical Talents.

3.3. **Executive Order for the *De Jure* Merger of GOCCs**. – Since directing the merger of existing GOCCs is inherently an exercise of legislative power, the *quasi*-legislative power granted to the President of the Philippines to merge GOCCs under R.A. No. 10149 shall formally be covered by an Executive Order (EO) issued for that purpose.

3.4. **Procedure for the *De Jure* Merger**. – Once the merger of GOCCs is formally approved by the President of the Philippines in a covering EO, the Governance Commission shall constitute a TWG composed of the relevant agencies involved, which shall pursue the merger based on the following circumstances:

3.4.1. *Chartered* GOCCs. – When the constituent corporations are all Chartered GOCCs, the terms of the EO shall constitute the full authority to effect combination of the assets and businesses, programs and projects into the Surviving GOCC, and to bring into effect the legal consequences of the merger.

3.4.2. *Nonchartered* GOCCs. – When the constituent corporations are all Nonchartered GOCCs, the procedure for merger under Sections 76,

77 and 78 of the Corporation Code of the Philippines, including the relevant and binding rules and regulations issued by the SEC, shall be followed, in order to bring about to full fruition the legal consequences of the merger.

3.4.3. *Combining Chartered and Nonchartered GOCCs.* – When the constituent corporations involve both Chartered and Nonchartered GOCCs, the procedure to be pursued to effect the merger shall be as follows:

- (a) *When the Surviving Corporation Is a Chartered GOCC,* a formal procedure for merger shall be filed with the SEC covering the constituent Nonchartered GOCCs pursuant to the terms of the Corporation Code, which would effect the merger of the Nonchartered GOCCs into the Chartered GOCC;
- (b) *When the Surviving Corporation Is a Nonchartered GOCC,* a formal procedure for merger covering all the constituent corporations, including those which are Chartered GOCCs, pursuant to the terms of the Corporation Code, which would effect the merger of the constituent corporations into the Surviving Nonchartered GOCC.

3.5. **Legal Effects of a *De Jure* Merger.**<sup>1</sup> – A *De Jure* Merger pursued under this Circular shall have the following effects:

- (a) The constituent GOCCs shall become a single corporation which shall be the Surviving GOCC designated in the EO and in the Plan of Merger;
- (b) The separate existence of the constituent GOCCs shall cease and be consolidated into the Surviving GOCC;
- (c) The Surviving GOCC shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties, functions and liabilities of each of the constituent GOCC, unless otherwise specified in the EO and the Plan of Merger;
- (d) The Surviving GOCC shall possess all the rights, privileges, immunities, properties and franchises of each of the constituent corporations, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all other interests belonging to or owned by each constituent GOCC, shall be deemed transferred to and vested in the surviving GOCC, without further act or deed; and
- (e) The Surviving GOCC shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such Surviving GOCC had itself incurred such liabilities or obligations, which shall include existing employment contracts; and any claim, action or proceeding pending by or against any of such constituent GOCC/s may be prosecuted by or against the Surviving GOCC. Neither the rights

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<sup>1</sup> Sec. 80, Corporation Code of the Philippines.

of creditors nor any lien upon the property of any of each constituent corporation shall be impaired by such merger.

- 3.6. **De Facto Merger.** – A *De Facto* Merger among GOCCs partakes basically of a sale of all or substantially all of the assets of one or more GOCCs to the Surviving GOCC pursuant to Section 40 of the Corporation Code.<sup>2</sup> The effect of a *de facto* merger is to strip the transferring GOCCs of their assets and business enterprise, leaving the shell of the juridical personality.

After a *de facto* merger has been effected, the following options are available to the Supervising Agencies of the absorbed GOCCs: (a) to shelve the remaining juridical entity as “Inactive or Non-Operational” but maintain their status for any future use, subject to prior approval from the Governance Commission; or (b) to pursue separate procedures for their formal abolition.

- 3.7. **Procedure for De Facto Merger.** – A *de facto* merger shall be formally covered by an EO issued for that purpose.

- (a) For the “Surviving GOCC” (i.e., the transferee or absorbing GOCC), its Governing Board shall formally pass a resolution to purchase or take-over the assets, business enterprise, programs activities, and liabilities of the transferring GOCCs under the terms and conditions directed under the EO;
- (b) For Chartered “Transferring GOCCs”, their Governing Boards shall pass the resolution formally transferring its assets, business enterprise, programs and activities, and such liabilities arising therefrom to the Surviving GOCC as directed under the terms of the EO; and
- (c) For Nonchartered “Transferring GOCCs”, their Governing Boards shall pass the resolution formally transferring their assets, business enterprise, programs and activities, and such liabilities arising therefrom to the Surviving GOCC as directed under the terms of the EO, and shall cause the holding of a special stockholders’ meeting for the ratification of such board resolution, pursuant to the requirements of Section 40 of the Corporation Code.

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<sup>2</sup> Sec. 40. *Sale or other disposition of assets.*—Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-third (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least two thirds (2/3) of the members, in a stockholders’ or members’ meeting duly called for the purpose. x x x *Provided,* That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

Sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated. x x x

In non-stock corporations, where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section.

3.8. **Legal Effects of De Facto Merger.** – Pursuant to the jurisprudence arising from the application of Section 40 of the Corporation Code, the following are the legal effects of a *De Facto Merger*:

- (a) *Assets and Business Enterprise of the Transferring GOCCs.* – Upon completion of the transfer, the Surviving GOCC assumes all the assets and business enterprise so transferred to it, but only from the date of actual delivery.
- (b) *Liabilities of Transferring GOCCs.* – All existing liabilities of the Transferring GOCCs shall remain their separate liabilities, to be paid purportedly from the proceeds or consideration received from the Surviving GOCCs.

However, under the “Business Enterprise Doctrine of Succession of Liabilities” recognized in Philippine jurisprudence, the creditors (other than employees’ claims) of the Transferring GOCCs, in the event the latter are insolvent or not in a position to pay their debts, have the common-law right to proceed against the “Surviving GOCC”.<sup>3</sup>

- (c) *Employment Contracts and Employee Claims.* – Unless otherwise specifically taken by the “Surviving GOCC,” employees of the Transferring GOCCs do not become employees of the “Surviving GOCC”, and the sale of the business enterprise entitles the Transferring GOCCs to legally terminate the employment of their employees, but subject to payment of separation pay.<sup>4</sup>

Unless there is basis for piercing the veil of corporate fiction to make the “Surviving GOCC” liable,<sup>5</sup> the claims of the employees against the Transferring GOCCs cannot be pursued against the “Surviving GOCC.”<sup>6</sup>

3.9. **Matters to Be Resolved by the TWG on the De Facto Merger.** – The TWG formed to implement the merger of the GOCCs shall resolve the following matters:

- (a) Settlement of separation pay of affected employees;
- (b) Surrender of original copies of corporate books of account and financial records to the surviving corporation, and officially received by the latter;
- (c) Inventory of absorbed GOCC’s existing programs and projects which are to be transferred to the surviving corporation;
- (d) Inventory of absorbed GOCC’s assets and liabilities, if any and the manner by which said assets and liabilities shall be disposed of and settled;

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<sup>3</sup> *Edward J. Nell Co. v. Pacific*, 15 SCRA 415 (1965); *Philippines National Bank v. Andrada Electric & Engineering Co.*, 381 SCRA 244 (2002); *McLeod v. NLRC*, 512 SCRA 222 (2007); *Jiao v. NLRC*, 670 SCRA 184 (2012); *Caltex (Phils.), Inc. v. PNOOC Shipping and Transport Corp.*, 498 SCRA 400 (2006).

<sup>4</sup> *Central Azucarera del Danao v. CA*, 137 SCRA 295 (1985); *Barayoga v. APT*, 473 SCRA 690 (2005).

<sup>5</sup> *National Federation of Labor Union v. Ople*, 143 SCRA 124 (1986); *Peñafrancia Tours and Travel Transport v. Sarmiento*, 634 SCRA 279 (2010).

<sup>6</sup> *Sunio v. NLRC*, 127 SCRA 390 (1984); *San Felipe Neri School of Mandaluyong, Inc. v. NLRC*, 201 SCRA 478 (1991); *Yu v. NLRC*, 245 SCRA 134 (1995); *Complex Electronics Employees Assn. v. NLRC*, 310 SCRA 403 (1999).

- (e) Inventory of all pending cases brought by and against both GOCCs, the status of such cases, and corresponding actions to resolve said cases, as well as the amount of contingent liabilities from said cases, if any;
- (f) Change Management Plan for affected stakeholders other than the creditors and employees;
- (g) The formal submission of the *Plan of Integration* of the merged GOCCs and their Subsidiaries and Affiliates, which shall then be approved by at least two-thirds (2/3) of the members of the TWG for implementation of the surviving corporation;
- (h) Such other matters to be resolved for the effective and expeditious merger of the GOCCs.

#### 4. ABOLITION OF GOCCs

4.1. **Coverage of “Abolition”.** – “Abolition” under Section 5(a) of R.A. No. 10149 is a generic term that lawfully covers the following legal processes:

- (a) *Dissolution*, which is the point in time when a GOCC ceases to exist as a going concern or for pursuit of its business purpose, and its juridical capacity remains only for purposes of winding-down its affairs and the liquidation of its assets. The date of dissolution shall be effective upon the issuance of the President’s approval of the Governance Commission’s recommendation to abolish a GOCC.
- (b) *Liquidation*, which takes place immediately after dissolution and involves, but is not limited to, the settlement and adjustment of claims against the GOCC, payment of its just debts, and collecting all that is due the corporation.<sup>7</sup> In no case shall the period of Liquidation of a GOCC exceed three (3) years pursuant to the Corporation Code.
- (c) *If applicable, Integration of a GOCC Into the National Agency Framework*, which has the effect of transferring its assets, programs and activities into a unit, office or division of the Supervising Agency.
- (d) *If applicable, Integration of a GOCC into the Parent GOCC*, which is the formal abolition of a GOCC with the intention to effect the transfer of its assets, programs and activities into its Parent GOCC, which achieves more efficiently the ends of a *De Facto* Merger.

4.2. **Public Policy Considerations for the Abolition of GOCCs.** – The abolition of GOCCs under R.A. No. 10149 shall be pursued consistent with the following policies:

- (a) *Safeguarding the Public Purpose of Public Funds/Properties.* – The manner of abolition of every GOCC shall be pursued in a manner that preserves the value of its assets and business enterprise that would

<sup>7</sup> *China Banking Corp v. M. Michelin & Cie*, 58 Phil. 261 (1933); *Yu v. Yukayuan*, 589 SCRA 588 (2009).

provide for the highest possible liquidation value to cover the legitimate interests of all stakeholders, and allow the public service interests to be pursued in the agency that will take-over the abolished GOCC's social development functions.

- (b) *Safeguarding the Civil Service Interests and Employees' Entitlement to Reasonable Separation Benefits.* – The civil service rights of employees in GOCCs which have been approved for abolition, as well as providing for the separation pay to which they may be entitled, shall be one of the highest considerations in pursuing the liquidation process of an abolished GOCC.
- (c) *Safeguarding the Priority Claims of Legitimate Creditors of GOCCs.* – The liquidation of a GOCC that has been approved for abolition shall be undertaken in full consideration of the security and property rights of legitimate creditors.

**4.3. General Procedures for the Abolition of GOCCs.** – Upon the issuance of the formal approval for the abolition of a GOCC, the Governance Commission shall constitute a TWG consisting of the representative/s from the Supervising Agency and Concerned Agencies/GOCCs, who shall implement the abolition based on the following:

- (a) *Chartered GOCC.* – The state of dissolution of the Chartered GOCC takes effect upon formal issuance of the EO; and
- (b) *Nonchartered GOCC.* – Treatment of the assets, business enterprise, programs and activities of the Nonchartered GOCC which has been approved for abolition shall be in accordance with the terms of the formal approval issued for the purpose, and under terms and procedures that would ensure safeguarding of the assets, business enterprise, programs and activities of the abolished GOCC that best serves the public's interest. The formal dissolution of the juridical entity of the Nonchartered GOCC shall be pursued strictly in accordance with the provisions of the Corporation Code.

#### **4.4. Abolition of a Chartered GOCC**

**4.4.1. Executive Order to Effect Abolition.** – Under Section 5(a) of R.A. No. 10149, the "point of abolition" takes effect "upon the approval of the President" of the recommendation of the Governance Commission to abolish the GOCC/s. Since a Chartered GOCC exists pursuant to a special legislation issued by Congress, its abolition under the terms of Section 5(a) of R.A. No. 10149 requires the President to exercise his quasi-legislative power through an EO, which requires full public notice of essentially a repeal of a legislative primary franchise.

**4.4.2. Legal Effects of the EO Abolishing a Chartered GOCC.** – The issuance of the EO effects the formal dissolution of the GOCC, which thereafter ceases to exist as a going concern, and triggers the process of liquidation of its business enterprise.

The abolished GOCC shall be liquidated shall be in accordance with



the terms and conditions provided for in the EO which seeks to safeguard the assets, business enterprise, programs and activities of the abolished GOCC under the terms and procedures for the best interests of the GOCC's stakeholders.

The Governing Board of the abolished GOCC shall continue to possess powers but only to effect the liquidation of the GOCC in accordance with the terms of the EO and procedure laid down by the TWG.

- 4.4.3. *Termination of Chartered GOCC.* – The juridical entity of the Chartered GOCC shall cease to exist for any and all purpose(s), and its Governing Board shall be deemed to have reached the stage of *functus officio* upon completion of the liquidation process as declared by the Governance Commission.

#### 4.5. **Abolition of a Nonchartered GOCC**

- 4.5.1. *Memorandum Order to Effect Abolition.* – Under Section 5(a) of R.A. No. 10149, although the "point of abolition" of a Nonchartered GOCC is upon the approval of the President of GCG's recommendation to abolish it, nonetheless, it is only after such approval that the Governance Commission may implement the legal processes of dissolution, liquidation and termination which must all be in accordance with the procedures mandated under the Corporation Code of the Philippines.

Therefore, when it is a Nonchartered GOCC which the President has approved for abolition, such approval may take the form of a Memorandum Order (MO) from the President to the Governance Commission, and thereafter the formal dissolution and liquidation of such Nonchartered GOCC, consistent with the Corporation Code of the Philippines.

- 4.5.2. *Legal Effects of the MO Abolishing a Nonchartered GOCC.* – The issuance of the formal approval of the dissolution of a Nonchartered GOCC legally authorizes the Governance Commission to pursue the formal dissolution, liquidation and termination of the Nonchartered GOCC.

The manner by which the abolished Nonchartered GOCC shall be liquidated shall be in accordance with the terms and conditions provided for in the approval, which seeks to safeguard the assets, business enterprise, programs and activities of the abolished GOCC under the terms and procedures which are for the best interests of the GOCC's stakeholders.

During the liquidation process, the Governing Board shall continue to possess its corporate powers but only to effect the liquidation of the GOCC in accordance with the terms of the approval and procedure laid down by the TWG.

- 4.5.3. *Manner of Formal Dissolution of Nonchartered GOCC.* – The formal dissolution of the Nonchartered GOCC approved for abolition shall

be through any of the methods of dissolution provided for in the Corporation Code that best adheres to the terms of the approval, thus:

- (a) Voluntary Dissolution Where No Creditors Are Affected under Section 118;
- (b) Voluntary Dissolution Where Creditors Are Affected under Section 119;
- (c) Dissolution by the Shortening of the Corporate Term under Section 120.

4.5.4. *Termination of Nonchartered GOCC.* – The juridical entity of the Nonchartered GOCC shall cease to exist for any and all purposes at the end of the three (3) year period from the date of the approval, as provided in Section 122 of the Corporation Code.

4.6. **Matters to Be Resolved by the TWG on Abolition.** – The TWG shall resolve the following:

- (a) Settlement of separation pay of affected employees;
- (b) Surrender of original copies of corporate books of account and financial records to the Commission on Audit, and officially received by the latter;
- (c) Inventory of abolished GOCC's existing programs and projects which are to be terminated or transferred to the appropriate agency, as the case may be;
- (d) Inventory of abolished GOCC's assets and liabilities, if any and the manner by which said assets and liabilities shall be disposed of and settled;
- (e) Change Management Plan for affected stakeholders other than the creditors and employees
- (f) Inventory of all pending cases brought by and against the dissolved GOCC, the status of such cases, and corresponding actions to resolve said cases, as well as the amount of contingent liabilities from said cases, if any;
- (f) The formal submission of the *Plan of Liquidation* of the GOCC which shall then be approved by all members of the TWG for implementation of the dissolved GOCC, Parent GOCC, or Supervising Agency, as the case may be;
- (g) Such other matters to be resolved for the effective and expeditious abolition, dissolution and liquidation of the concerned GOCC.

4.7. **Integration of a GOCC into the National Agency Framework.** – In order to avoid the legal effects of the Business Enterprise Doctrine of Succession of Liabilities, especially when the liabilities incurred by the GOCC were unwarranted, a formal dissolution of the GOCC may be pursued instead of a formal transfer, sale or assignment of all or substantially all of the assets of the GOCC to the Supervising Department. The liquidation process allows the payment of all claims to be limited to the GOCC, and any

remaining assets shall then be brought up to the Supervising Agency to a unit, office or division that would take over the programs and activities of the abolished GOCC.

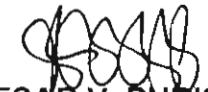
- 4.8. **Integration of a GOCC into the Parent GOCC.** – If the exigencies of public service require the avoidance of incurring the legal effects and consequences of merging a Subsidiary GOCC with the Parent GOCC (e.g., absorbing unwarranted liabilities incurred by the Subsidiary), the proper route is for the Subsidiary GOCC to be formally abolished and liquidated, and any remaining assets and activities shall be absorbed by the Parent GOCC as an integral process of liquidation.

The process of formally dissolving and liquidating the Subsidiary GOCC shall then follow the applicable procedures covered in either Sections 4.4 or 4.5 above.

**5. 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](http://www.gcg.gov.ph).

  
**CESAR L. VILLANUEVA**  
*Chairman*

  
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