



## **MEMO FOR THE GOVERNANCE COMMISSION**

**TO :** CHAIRMAN CESAR L. VILLANUEVA  
COMMISSIONER MA. ANGELA E. IGNACIO  
COMMISSIONER RAINIER B. BUTALID

**FROM :** ATTY. JOHANN CARLOS S. BARCENA

**SUBJECT :** RESEARCH INSTITUTIONS

**DATE :** 20 March 2012

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### **I. REFERENCE**

1. For the Commission's consideration is a Memorandum prepared in accordance with the directive of the Commission, recommending the number of board seats that need to be appointed from a shortlist submitted by the GCG for: in the Philippine Institute for:

- **PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (PIDS)**
- **PHILIPPINE CENTER FOR ECONOMIC DEVELOPMENT (PCED)**
- **PHILIPPINE RICE RESEARCH INSTITUTE (PRRI)**

### **II. RESEARCH INSTITUTIONS AND R.A. 10149**

2. **RESEARCH INSTITUTIONS AND R.A. 10149.** – The following is an exposition of the treatment by the “*GOCC Governance Act of 2011*” (R.A. No. 10149) of “Research Institutions”:

**2.1. Coverage of R.A. 10149.** – Under Section 4 of R.A. No. 10149, “This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, but excluding... research institutions: *Provided, That in... research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG.*”

**2.2. Legislative Deliberations.** – Section 4 of R.A. No. 10149, which lays down the relation between the statute and research institutions, was discussed at length during the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067. The initial proposal by Senator Edgardo Angara was to exclude government think tanks and research institutions considering that R.A. No. 10149 was directed

primarily towards corporations performing business and/or regulatory functions.<sup>1</sup>

It was, however, suggested by Senator Sergio Osmeña that the Fit & Proper Rule must nonetheless be applied to appointees to the boards of government research institutions.<sup>2</sup> This was seconded by Rep. Henedina Abad who expressed that the coverage of research institutions provide accountability, as it makes clear to members of the board to whom they are accountable to, and to what they are accountable for.<sup>3</sup>

Senator Franklin M. Drilon proposed a compromise in that only research institutions affiliated or attached to state universities and colleges be excluded from the coverage of the law.<sup>4</sup> The underlying rationale for such proposal was that, since state universities and colleges are excluded from the coverage of the law, it only stands to reason that research institutions and think tanks affiliated with the same be likewise excluded.

Senator Osmeña also made his own proposal for a compromise, in that a portion of the members of the board of research institutions be recommended by the Governance Commission for GOCCs (GCG). The point of Senator Osmeña was that “the GCG [should] be able to monitor [and] see if there can be any improvements in the way the institution is run... [and] to bring in some outsiders to have a new perspective.”<sup>5</sup> In the end, both panels from the Senate and the House of Representatives agreed that research institutions be excluded, “provided, however, that at least a third of the board shall be appointed by the President from the nominees of the GCG.”<sup>6</sup>

Significantly, when the matter of research institutions was being discussed, both panels of Congress appears to have not identified all government research institutions and think tanks in existence, nor was there any reference to these institutions’ respective charters. Although specific mention was made as regards the Philippine Rice Research Institute (PRRI) and the Philippine Institute for Development Studies (PIDS).

**2.3. Definition of “Research Institution”.** – R.A. No. 10149 does not provide for a definition of the term “Research Institution.” When a term used by a law is not given a legal definition by statute or jurisprudence it should be taken in its ordinary and common and popular meaning. The Supreme Court has held that absent a statutory definition, a word or a term is “to be understood in its

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<sup>1</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, p. 19.

<sup>2</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, p. 20.

<sup>3</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, pp. 25-26.

<sup>4</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, p. 26.

<sup>5</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, p. 102.

<sup>6</sup> Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 11 May 2011, p. 102; Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067, 25 May 2011, p. 22.

plain and ordinary meaning”, with the words “to be taken in their usual and familiar signification, with due regard to their general and popular use.”<sup>7</sup>

**2.3.1. Common Definition.** A “Research Institution” is commonly defined as a center or place where a “studious inquiry or examination; *especially*: investigation or experimentation aimed at the discovery and interpretation of facts, revision of accepted theories or laws in the light of new facts, or practical application of such new or revised theories or laws;”<sup>8</sup> is conducted or a place where a “collecting of information about a particular subject”<sup>9</sup> is done.

**2.3.2. The Stevenson-Wydler Act.** Another definition that can serve as guide is that found in the Stevenson-Wydler Technology Innovation Act of 1980 (Stevenson-Wydler Act),<sup>10</sup> which defined a “research institution” as “an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.”<sup>11</sup>

The discussions during the Bicameral Deliberations of R.A. 10149<sup>12</sup> regarding the meaning of the term “research institutions” are in accord with the definition given by the Stevenson-Wydler Act. During the deliberations, particular emphasis was given to the fact that Research Institutions were “think tanks” that are primarily meant to educate, much like educational institutions. Research Institutions are therefore institutions, which are primarily for scientific and educational purposes, where any incidental income derived from the research is used solely for the furtherance of the work conducted in such institutions.

**2.3.3. GCG Memo. Circ. No. 2012-04.** In GCG Memorandum Circular No. 2012-04 (M.C. 2012-04),<sup>13</sup> the Commission defined the coverage of the term “research institution” as used in R.A. 10149, to wit:

2.1.5 **Research Institutions:** The term “research institutions” referred to in Section 4 of RA 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 (IRRI) and the Philippine Institute for Development Studies (PIDS).

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 nonchartered GOCCs organized under their

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<sup>7</sup> China Banking Corp. v. Court of Appeals, G.R. 146749, 10 June 2003, 403 SCRA 634.

<sup>8</sup> MERRIAM-WEBSTER DICTIONARY, [http://www.merriamwebster.com/dictionary/research?show=0&t=1336034\\_169](http://www.merriamwebster.com/dictionary/research?show=0&t=1336034_169).

<sup>9</sup> *Id.*

<sup>10</sup> Stevenson-Wydler Technology Innovation Act of 1980 21, 1980, 96th Congress, <http://www.csrees.usda.gov/about/offices/legis/techtran.html>.

<sup>11</sup> “STTR Definition of Research Institution”, SBIR/STTR Statute 15 U.S.C. 638(e)(8), [http://mdasbir.com/pages/STTR/STTR\\_Definition\\_Research\\_Institution.aspx](http://mdasbir.com/pages/STTR/STTR_Definition_Research_Institution.aspx); underscoring supplied.

<sup>12</sup> Minutes of the “Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 2640 and House Bill No. 4067 (GOCC Governance Act of 2011)”, Pages 18 to 28, May 11, 2011.

<sup>13</sup> Entitled “Nomination and Appointment of Appointive Members of the Board of Directors/Trustees of GOCCs, Subsidiaries and Affiliates”.

articles of incorporation to engage into institutional research, are within the full coverage of RA No. 10149.<sup>14</sup>

Under M.C. 2012-04, “chartered GOCCs where engaging in research constitutes merely an additional function of the GOCC... are within the full coverage of R.A. No. 10149.”<sup>15</sup>

**2.4. The “Primary Purpose” Test.** – The test, therefore, is whether the entity was created for the primary purpose of acting as a research institution; and not whether research functions are included among its primary powers. It bears emphasis that the purpose of an entity is different from its powers/functions; the latter is the means, while the former is the end.

**2.5. Limited Application of R.A. No. 10149.** – Section 4 of R.A. No. 10149 expressly excludes research institutions from its application and coverage, with the caveat that “the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG.”

By virtue of this exclusionary provision, research institutions are not subject to the GCG’s monitoring, evaluation, and implementation functions,<sup>16</sup> even though they may come within the definition of a GOCC. They are likewise excluded from the coverage of R.A. No. 10149’s provisions pertaining to the Compensation and Position Classification System (CPCS), Board of Directors/Trustee/Officers, Disclosure Requirements, and the provisions relating to the creation and acquisition of another corporation.

**2.5.1. Appointment of Board Members.** The applicability of R.A. No. 10149 is strictly limited to the GCG submitting a list for appointment of “one-third (1/3) of the board members”. While R.A. No. 10149 excludes research institutions from its coverage, the list to be submitted by the GCG as to 1/3 of the latter’s members must nonetheless comply with the procedures set out in the law itself and by the GCG.<sup>17</sup> In other words, nominees must also be qualified by the Fit & Proper Rule provided under Section 16 of R.A. No. 10149.

The phrase “board members” should be understood as pertaining to the number of “appointive directors” only, and not to the total number of members of the Governing Board of the institution. As shall be further elaborated below, such interpretation is in accordance to the “limiting” character of Section 4 of R.A. No. 10149.

**2.5.1.1. “Fractional” Situations.** The situation may arise that the number of Appointive Directors in a research institution is not in a number that is a multiple of three (3). Such situations raise the question of how many of such board members must be appointed by the President from a shortlist submitted by the GCG.

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<sup>14</sup> *Emphasis supplied.*

<sup>15</sup> GCG Memo. Circ. No. 2012-04, Par. 2.1.5.

<sup>16</sup> See Rep. Act No. 10149, Sec. 5.

<sup>17</sup> Rep. Act No. 10149, Sec. 16; See also GCG Memo. Circ. No. 2012-04.

**2.5.1.2. Strict “33%” Interpretation.** The strict interpretation of the law would be that the one-third (1/3) requirement should be taken to mean that a number which is equivalent to not less than 33% of the total number of Appointive Directors should be appointed by the President from a shortlist submitted by the GCG. Such that, in effect, *at least* one-third of the members of the Board should have been appointed from a shortlist of the GCG.

**2.5.1.3. Liberal “One Out of Every Three” Interpretation.** Another, more liberal, interpretation of the law would be that the one-third (1/3) requirement means one out of every three Appointive Directors shall be appointed by the President from the shortlist submitted by the GCG. Such that, whenever one-third of the total number of board seats results in a fraction, such shall be rounded to the lowest whole number.

It is submitted that this interpretation is more in accord with the spirit and intent of R.A. No. 10149. Section 4 of the statute is a limiting provision; it excludes research institutions from the coverage of the law even though such institutions satisfy the definition of a GOCC under R.A. No. 10149. The intent of the law was to limit its application with respect to research institutions. Following such spirit, the interpretation of the one-third (1/3) requirement under Section 4 should be one of limited application as well.

**2.5.1.3. Other 1/3 Examples.** The Administrative Code of 1987 and [the unconstitutional] Executive Order No. 284 (s.1987) provide that “in order to fully protect the interests of the government in government-owned or controlled corporations, at least one-third (1/3) of the Boards of such corporations should either be a Secretary, Undersecretary, or Assistant Secretary.” This is an example of a statutory intent to provide for an enabling provision, rather than one that limits.

### **III. APPLICATION TO SPECIFIC INSTITUTIONS**

#### **3. PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (PIDS). –**

**3.1. Creation.** – PIDS was created through Executive Order No. 1201<sup>18</sup> as a non-stock, non-profit government corporation attached to the National Economic and Development Authority (NEDA) for policy and program coordination.

**3.2. Primary Purpose.** – Under its Charter, PIDS shall have the following purposes and objectives:

- (a) To **develop a comprehensive and integrated research program** that will provide the research materials and studies required for the

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<sup>18</sup> Entitled “*Creating the Philippine Institute for Development Studies.*”

formulation of national development plans and policies. Such program shall be evolved through constant interaction between the institute and the appropriate government agency or agencies;

- (b) To **serve as the common link between the government and the existing research institutions**, and for this purpose, to provide a forum wherein various research studies are discussed and evaluated;
- (c) To **conduct and undertake research** requested by government or its agencies and to arrange for research to be conducted by other research institution and individuals, locally and abroad;
- (d) To **conduct joint studies with domestic research institutions** in the academic, government and business sector; and
- (e) To **establish a repository for economic research information** and other related activities.<sup>19</sup>

From the foregoing enumeration of its purposes and objectives, it is clear that PIDS was created for the primary purpose of serving as a research institution.

**3.3. Board of Trustees.** – Under its Charter, the affairs of PIDS is managed by a Board of Trustees, headed by the Secretary of Economic Planning, or his representative, as Chairman and four (4) other members to be appointed by the President upon recommendation of the Secretary of Economic Planning. The appointive members of PIDS shall serve a term of four (4) years.

**3.4. Effect of R.A. No. 10149.** – With the enactment of R.A. No. 10149, one-third (1/3) of the Board of Trustees shall be appointed from a list submitted by the GCG. Considering that there are four (4) appointive members, the GCG is mandated to submit a list nominating for appointment one (1) member of the Board of Trustees. Such member shall also serve for a term of four (4) years.

#### **4. PHILIPPINE CENTER FOR ECONOMIC DEVELOPMENT (PCED). –**

**4.1. Creation.** – PCED was created through Presidential Decree No. 453<sup>20</sup> as an entity with a distinct corporate personality, which shall be located at the University of the Philippines.

**4.2. Primary Purpose.** – While the Charter of PCED does not expressly state the purpose or objective of the institution, its “function” was clearly distinguished from its “powers”. Under P.D. 453, the function of PCED is to “give financial and moral support to the research, teaching, training and other programs of the School of Economics of the University of the Philippines”<sup>21</sup> so that the School can undertake the following academic functions at a larger scale:

- (a) To **conduct and engage in research work and studies** oriented towards national policy and the needs of national development in the field of economics...

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<sup>19</sup> Pres. Dec. No. 1201, Sec. 2; emphasis supplied.

<sup>20</sup> Entitled “*Creating the Philippine Center for Economic Development.*”

<sup>21</sup> Pres. Dec. No. 453, Sec. 1.

- (b) To **undertake training programs** designed to provide the government and the nation as a whole of planners, analysts and economic statisticians, or in general, of technicians skilled and knowledgeable in the problems of economic development;
- (c) To **serve as the medium for bringing together experts and specialists** in other disciplines to conduct studies and investigations and engage in interchange of ideas so as to bring in their knowledge and experience to bear on common problems with a view to evolving fresh ideas and approaches that could be effectively applied to economic development;
- (d) To **engage in the publication of the results of research.**<sup>22</sup>

**4.3. Board of Trustees.** – Pursuant to Section 3 of its Charter, PIDS is managed by a Board of Trustees composed of nine (9) members, to wit:

- (a) The Director-General of the National Economic and Development Authority (NEDA), as Chairman;
- (b) The Executive secretary;
- (c) The Secretary of Industry;
- (d) The Secretary of Finance;
- (e) The Commissioner of the Budget;
- (f) The Governor of the Central bank;
- (g) The President of the University of the Philippines;
- (h) The Dean of the School of Economics;
- (i) Two members to be appointed by the President of the University of the Philippines, upon recommendation of the Dean of the School of Economics, shall serve for a term of three years and may be reappointed.

**4.4. Effect of R.A. No. 10149.** – With the enactment of R.A. No. 10149, one-third (1/3) of the Board of Trustees shall be appointed from a list submitted by the GCG. Considering that there are only two (2) appointive members, the GCG cannot shortlist any member of the board.

## **5. PHILIPPINE RICE RESEARCH INSTITUTE (PRRI).** –

**5.1. Creation.** – The PRRI is a body corporate created through Executive Order No. 1061,<sup>23</sup> and made under the then Ministry of Agriculture and Food,<sup>24</sup> now the Department of Agriculture (DA).

**5.2. Primary Purpose.** – Under its Charter, it is expressly stated that the purpose and objective of the PRRI is to “**develop**, in coordination with the University of the Philippines at Los Baños (UPLB), **a national rice research program** so as to sustain and further improve the gains already made in rice production,

<sup>22</sup> Pres. Dec. No. 453, Sec. 1; *emphasis supplied*.

<sup>23</sup> Entitled “*Establishing the Philippine Rice Research Institute.*”

<sup>24</sup> Exec. Order No. 1061, Sec. 1.

improve the income and economic condition of small rice farmers, expand employment opportunities in the rural areas, and ultimately promote the general welfare of the people through self-sufficiency in rice production.”<sup>25</sup>

E.O. 1061 recognized that “the improvement of rice productivity requires the services of highly competent and multi-disciplined teams of agricultural and social scientists, amply supported with facilities, funds, support staff and working conditions conducive to the implementation of rice research and development programs in the different agro-ecological regions of the Philippines.”<sup>26</sup>

**5.3. Board of Trustees.** – Under Section 4 of its Charter, the corporate powers of PRRI are exercised, and all its business, activities and properties are controlled, by a Board of Trustees, composed of the [Secretary] of Agriculture as *ex officio* Chairman and eight (8) other members to be appointed by the President of the Philippines upon recommendation of the [Secretary] of Agriculture. The appointive members of the board serve at the pleasure of the President of the Philippines.

**5.4. Effect of R.A. 10149.** – With the enactment of R.A. 10149, one-third (1/3) of the Board of Trustees shall be appointed from a list submitted by the GCG. Considering that there are eight (8) appointive members, the GCG is mandated to submit a list nominating for appointment two (2) members of the Board of Trustees. Such member shall also serve at the pleasure of the President.

#### **IV. CONCLUSION AND RECOMMENDATION**

6. Following the above discussion, it is recommended that the respective boards of the **PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (PIDS)**, **PHILIPPINE CENTER FOR ECONOMIC DEVELOPMENT (PCED)**, and **PHILIPPINE RICE RESEARCH INSTITUTE (PRRI)** be filled in accordance with the foregoing recommendations.

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<sup>25</sup> Exec. Order No. 1061, Sec. 2; *emphasis supplied*.

<sup>26</sup> Exec. Order No. 1061, Last Whereas Clause.