



MEMORANDUM ORDER NO. 2012 - 42

CLASSIFYING PHILIPPINE FRUITS AND VEGETABLES INDUSTRIES INC. (PFVII) AS AN INACTIVE GOCC

WHEREAS, PHILIPPINE FRUITS AND VEGETABLES INDUSTRIES INC. (PFVII) was organized and incorporated by virtue of Securities and Exchange Commission (SEC) Registration No. 120090 on 05 April 1984;

WHEREAS, PFVII is a GOCC attached to the Department of Agrarian Reform (DAR) and classified in Annex A - Classification of GOCCs by Sectors, under the category of Land and Water Resources;

WHEREAS, Section 5 (a) of R.A. No. 10149 empowers the Commission to “[e]valuate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached. For this purpose, the GCG shall be guided by any of the following standards:

X X X

(3) ***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;***

(4) ***The GOCC is in fact dormant or nonoperational”***

X X X

WHEREAS, Section 5 (b) of R.A. No. 10149 authorizes the Commission to “Classify GOCCs into: (1) Developmental/Social Corporation; (2) Proprietary Commercial Corporations; (3) Government Financial, Investment and Trust Institutions; (4) Corporations with Regulatory Functions; and (5) Others as may be classified by the GCG, without prejudice to further sub-classifications in each category and/or any other classification based on parameters as it may find relevant or material such as, but not limited to, industry type. The classification shall guide the GCG in exercising its powers and functions as provided herein”;

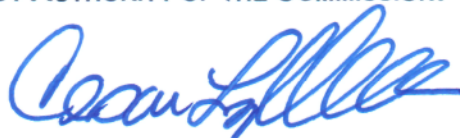
WHEREAS, in order to properly account for all the original one-hundred-fifty-eight (158) GOCCs, GFIs, GICPs/GCEs turned-over to the Commission by Congress, as well as those which have been accounted for since the constitution of the Commission, the GCG has included as classification in ANNEX A – CLASSIFICATION OF GOCCS BY SECTORS, of those which have been abolished, dissolved or have become inactive under “DISSOLVED/LIQUIDATED/INACTIVE”, which is undertaken through the issuance of a M.O. pursuant to a formal memorandum submitted to the Commission;

NOW, BE IT –

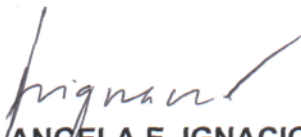
RESOLVED, PHILIPPINE FRUITS AND VEGETABLES INDUSTRIES INC. (PFVII) shall be classified as “DISSOLVED/LIQUIDATED/INACTIVE” under the Commission’s ANNEX A – CLASSIFICATION OF GOCCS BY SECTORS.

DONE, in the City of Manila, this 21ST day of December, Two Thousand Twelve.

BY AUTHORITY OF THE COMMISSION:



CESAR L. VILLANUEVA
Chairman



MA. ANGELA E. IGNACIO
Commissioner



RAINIER B. BUTALID
Commissioner

LEGAL BASIS FOR GCG'S POWER TO CLASSIFY GOCCS AND EVALUATE THEIR PERFORMANCE AND RELEVANCE

1. GCG'S POWER TO CLASSIFY GOCCS

1.1. Legal Basis of Power to Classify. – Under Section 5(b) of Republic Act (R.A.) No. 10149, otherwise referred to as the “GOCC Governance Act of 2011,” the GCG has been granted the power to classify GOCCs “based on parameters as it may find relevant or material such as, but not limited to, industry type . . . [to] guide the GCG in exercising its powers.” Unlike other powers of the GCG which may require prior consultation with the Supervising Agency of a GOCC, the power to classify GOCCs falling within its jurisdiction is plenary in character.

1.2. Effect of Classification as Inactive GOCC. – Among the legal consequences for the classification of a GOCC as “Inactive” would be that it no longer is within the listing of GOCCs where Appointive Directors are to be appointed to its Governing Board pursuant to the procedures mandated under Sections 15 to 18 of R.A. No. 10149.

2. GCG'S MANDATE TO EVALUATE GOCCS

2.1. Mandate of GCG to Evaluate GOCCs. – Under Section 5(a) of R.A. No. 10149, the Commission is both mandated and empowered to “Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, **abolished** or privatized, in consultation with the department or agency to which a GOCC is attached.”

2.2. Standards for Evaluation. – The same subsection mandates that the GCG shall be guided by any of the following standards, thus:

(1) 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;

(2) The GOCC's functions or purposes duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;

(3) 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-a-vis* the resource inputs;

(4) The GOCC is in fact dormant or nonoperational;

(5) The GOCC is involved in an activity best carried out by the private sector; and

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

3. CONSULTATION WITH SUPERVISING AGENCY

Section 5(a) of R.A. No. 10149 specifically mandates that the evaluation of the performance and the determination of the relevance of GOCCs shall be undertaken by the GCG "in consultation with the department or agency to which a GOCC is attached."

The pursuit of such consultative process is reiterated under the last paragraph of Section 5 which provides that "In the performance of its functions under subsections (a) . . . herein and in any other review or evaluation of a GOCC that the GCG may conduct, the GCG shall engage the participation of the Secretary or highest ranking official of the relevant agency or department, as the case may be."

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