



MEMORANDUM ORDER NO. 2012 - 33

EXCLUSION OF MILLENIUM CHALLENGE ACCOUNT – PHILIPPINES INC. FROM THE COVERAGE OF REPUBLIC ACT NO. 10149

WHEREAS, the Millennium Challenge Account is a fund created by the U.S. Government as an instrument for its foreign aid policy, and is managed by the Millennium Challenge Corporation (MCC), a U.S. corporation;

WHEREAS, MCC selected the Philippines in 2006 as one of the countries eligible to receive a grant from the fund, known as the *Philippines Compact*, based on the Philippines' performance on certain independent and transparency policy indicators;

WHEREAS, Millennium Challenge Account – Philippines Inc. (MCAP) is a government-owned-or-controlled-corporation (GOCC) incorporated through the Securities and Exchange Commission (SEC) pursuant to Executive Order (E.O.) No. 849, s. 2009, to serve as the legal entity and central point of contact for the Philippines that will be accountable for the projects funded in compliance with MCC's *Guidelines for Accountable Entities and Implementation Structures (Guidelines)*;

WHEREAS, MCAP is a *sui generis* GOCC as its management and operation involve well defined international obligations of the Philippines under the said compact with MCC;

WHEREAS, the said compact falls within the nature of an *international agreement* and has the same force of a statute insofar as the same is consistent with the 1987 Constitution;

WHEREAS, the *Guidelines* expressly provide for the policies, rules and guidelines on MCAP's Board Composition, compensation, corporate structure, and other aspects of MCAP's management and operations to the extent that country's international obligations under the compact are wholly incompatible with the provisions R.A. No. 10149, officially designated as the "*GOCC Governance Act of 2011*" (R.A. No. 10149);

WHEREAS, Section 3.2(c) of the *Compact* states that "[t]he Government will ensure that no law or regulation in the Philippines now or hereinafter in effect makes or will make unlawful or otherwise prevent or hinder the performance of any of the Government's obligations under this Compact, the [Program Implementation Agreement], or any other related agreement or transaction contemplated hereby or thereby";

WHEREAS, the factual circumstances of MCAP dictate that the rule on statutory construction against implied amendments, particularly with respect to the

Philippines' international obligations under the international agreement, *prevails* over the rule that exceptions should be strictly construed;

NOW, BE IT –

RESOLVED, MILLENNIUM CHALLENGE ACCOUNT PHILIPPINES INC. is hereby officially declared as **EXCLUDED** from the coverage of R.A. No. 10149 during the entire period of its existence that is shall be operating under the terms of the *Compact* and the covering *Guidelines*.

DONE, in the City of Manila, this 5th of November, Two Thousand and Twelve.



CESAR L. VILLANUEVA
Chairman

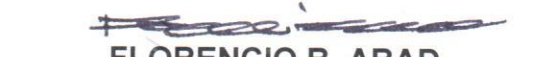


CESAR V. PURISIMA
*Secretary, Department of Finance
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MA. ANGELA E. IGNACIO
Commissioner



FLORENCIO B. ABAD
*Secretary, Department of Budget and
Management (DBM)*



RAINIER B. BUTALID
Commissioner