



## **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 :** CLASSIFICATION OF THE SUGAR REGULATORY  
ADMINISTRATION (SRA) AS A GICP

**DATE :** 27 February 2012

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### **I. REFERENCE**

1. For the Commission's consideration is the classification of the Sugar Regulatory Administration (SRA) as a government instrumentality with corporate powers (GICP), and thus within the coverage of the provisions of Republic Act (R.A.) No. 10149, officially designated as the "GOCC Governance Act of 2011".

This Memorandum was drafted pursuant to the directive of the Chairman on 24 February 2012 to review the legal status of the SRA.

### **II. GOVERNMENT INSTRUMENTALITIES WITH CORPORATE POWERS (GICPs) / GOVERNMENT CORPORATE ENTITIES (GCEs)**

2. **COVERAGE OF R.A. 10149.** – The provisions of R.A. 10149 is applicable to all GOCCs, as well as government instrumentalities with corporate powers (GICP) / government corporate entities (GCE).<sup>1</sup> Notably, for purposes of the said law, the term "GOCC" includes GICP/GCEs.<sup>2</sup>

**2.1. Definition of GICP/GCE.** – Section 3(n) of R.A. 10149 defines GICP/GCE as "instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law **with special functions or jurisdiction**, endowed with some if not all **corporate powers**,

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<sup>1</sup> Sec. 4, Rep. Act No. 10149.

<sup>2</sup> Sec. 3(o), Rep. Act No. 10149.

administering special funds, and enjoying **operational autonomy** usually through a charter.”<sup>3</sup>

Notably, the definition of GICP/GCE under R.A. No. 10149 is almost identical to the definition of an “instrumentality” under the Administrative Code of 1987, to wit:

- (10) Instrumentality refers to an agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions, and government-owned or controlled corporations.

**2.2. Origin of the Term.** – While the Administrative Code of 1987<sup>4</sup> defines an “instrumentality”, nowhere does it define the terms “GICP” and/or “GCE”. The creature now known as “GICP/GCE” originated from the decision of the Supreme Court in *Manila International Airport Authority v. Court of Appeals*,<sup>5</sup> where the Supreme Court, citing Section 2(10) of the Administrative Code of 1987, characterized the Manila International Airport Authority (MIAA) as a GICP/GCE, to wit:

MIAA is a **government instrumentality vested with corporate powers** to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. Section 2(10) of the Introductory Provisions of the Administrative Code defines a government “**instrumentality**” as follows:

SEC. 2. *General Terms Defined.* – x x x x

- (10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. xxx (*Emphasis supplied*)

When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers...

Likewise, when the law makes a government instrumentality **operationally autonomous**, the instrumentality remains part of the National Government machinery although not integrated with the department framework...

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<sup>3</sup> See also Sec. 2(10), Admin. Code. The Administrative Code defines “instrumentality” as an agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter...”

<sup>4</sup>Executive Order No. 292.

<sup>5</sup>G.R. No. 155650, 20 July 2006, SCRA.

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a government-owned or controlled corporation... These government instrumentalities are sometimes loosely called **government corporate entities**... (*Emphasis supplied*)

That there is now a newly discovered specie of government instrumentality, identified by jurisprudence as GICP/GCE,<sup>6</sup> was recognized with the issuance of Executive Order No. 596 (s.2006),<sup>7</sup> which acknowledged the need to include GICP/GCE within the jurisdiction of the Office of the Government Corporate Counsel.

**2.3. Instrumentality versus GICP.** – In the above-quoted portion of the decision in *MIAA v. Court of Appeals*, the Supreme Court apparently makes a distinction between an “instrumentality” and a “GICP”, in that a GICP “is like any other government instrumentality, the only difference is that [it] is vested with corporate powers.” In other words, all GICPs are government instrumentalities – that is why the Supreme Court held therein that the MIAA, a GICP, is exempt from the taxing powers of local government units because it is nonetheless a government instrumentality.

The same, however, cannot be said of the reverse. In *MIAA v. Court of Appeals*, the Supreme Court in effect implies that there are government instrumentalities without vested corporate powers. Hence, not all instrumentalities are GICPs. Only government instrumentalities vested with corporate powers fall within the definition of a GICP. It is axiomatic that in enacting laws, Congress is presumed to know the existing laws on the subject. Thus, when Congress resolved to adopt the nomenclature of “GICP/GCE”, and not “instrumentality”, in enacting R.A. No. 10149, despite its definition appearing to be almost identical with that of an “instrumentality” under the Administrative Code of 1987, it is presumed that Congress intended to adopt the meaning of “GICP/GCE” as it exists in the prevailing state of laws – that is, pursuant to *MIAA v. Court of Appeals*, as recognized by E.O. 596.

This sub-classification of GICP/GCE, as an entity covered under Section 2(10) of the Introductory Provisions of the Administrative Code, is not unique. In *MIAA v. City of Pasay*, a subsequent case which also recognized the creature that is GICP/GCE, the Supreme Court noted that the definition of “instrumentality” under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 uses the phrase “includes government-owned or controlled

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<sup>6</sup> See also Phil. Fisheries Dev't Authority, G.R. No. 169836, 31 July 2007, 528 SCRA 706 (2007); Manila International Airport Authority v. City of Pasay, G.R. No. 163072, 02 April 2009, 583 SCRA 234 (2009).

<sup>7</sup>DEFINING AND INCLUDING “GOVERNMENT INSTRUMENTALITY VESTED WITH CORPORATE POWERS” OR “GOVERNMENT CORPORATE ENTITIES” UNDER THE JURISDICTION OF THE OFFICE GOVERNMENT CORPORATE COUNSEL (OGCC) AS THE PRINCIPAL LAW OFFICE OF GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCC) AND FOR OTHER PURPOSES.

corporation,” which means a that a government instrumentality may or may not be a GOCC. The Supreme Court concluded that the term “instrumentality” is **broader** than the term “GOCC”. Thus, while under the Administrative Code of 1987 all GOCCs are instrumentalities, *MIAA v. City of Pasay* clarified that not all instrumentalities are GOCCs.

The premise of *MIAA v. Court of Appeals* in creating a sub-classification of “GICP/GCE” is that, despite the definition of “instrumentality” under Section 2(10) of the Introductory Provisions of the Administrative Code of 1987 which contains the phrase “endowed with some if not all corporate powers”, there are in fact instrumentalities without corporate powers. This only stands to reason because otherwise, the phrase “instrumentality vested with corporate powers” used by *MIAA v. Court of Appeals* to defined GICP/GCE would have been a redundancy. Thus, in the final analysis, what makes an instrumentality a GICP/GCE is the vesting of some, if not all, corporate powers enumerated in the Corporation Code. These corporate powers must be expressly given and/or enumerated in the Charter of the entity concerned. This can be gleaned from the GICPs/GCEs identified by R.A. 10149 [and E.O. 596], wherein such express enumeration of corporate powers is in fact present.

- 2.4. The “Corporate Powers” Test.** – From the foregoing, it becomes clear that the endowment of some, if not all, corporate powers is necessary before an instrumentality or agency may be properly characterized as a “GICP/GCE”.

### **III. THE SUGAR REGULATORY ADMINISTRATION (SRA)**

- 3. Creation of SRA.** – The Sugar Regulatory Administration (SRA) was created through Executive Order No. 18 (s.1986). The Department of Justice (DOJ), through a ruling, placed the SRA as an attached agency of the Department of Agriculture (DA) and subsequently made the Secretary of Agriculture Chairman of the Board.<sup>8</sup>
- 4. G.R. No. 90482.** – In *Republic v. Court of Appeals*,<sup>9</sup> the Supreme Court, in no uncertain terms, categorically declared that “the SRA is neither a government-owned or controlled corporation nor a subsidiary thereof.” According to the Supreme Court, “the SRA no doubt, is an administrative agency or body,” using the definition of “administrative agency” in Black’s Law Dictionary. As such, “the OGCC does not have the authority to represent it.”
- 5. Executive Order No. 631, s.2007.** – Taking cognizance of the classification of the SRA as an administrative body and not a GOCC, the President issued Executive Order No. 631 (s.2007) declaring that the same is in fact a GOCC.

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<sup>8</sup> [http://www.sra.gov.ph/aboutus\\_history1.html](http://www.sra.gov.ph/aboutus_history1.html)

<sup>9</sup> G.R. No. 90482, 05 August 1991, 200 SCRA 226 (1991).

The Executive Order declared that “the SRA falls within the definition of a GOCC under the Administrative Code of 1987 since (1) its powers and functions as provided in E.O. No. 18 (1986) relate to public needs, (2) it is endowed with corporate personality and vested with corporate powers, and (3) its predecessors... were likewise endowed with corporate personality and vested with corporate powers.”

The Executive Order also stated that “the SRA is a GOCC when the ‘Charter Test’ is applied: (1) it is created by a special law (E.O. No. 18); (2) it acquires juridical personality based exclusively on law; and (3) it is endowed by its charter with a corporate form of governance.”

In effect, the Executive issued its own interpretation of existing laws and made its own classification of the SRA, which was the opposite of the classification of the Supreme Court.

**6. Administrative Code of 1987.** The Administrative Code contains its own definition of an “agency”, to wit:

- (4) “*Agency of the Government*” refers to any of the various units of the Government, including a department, bureau, office, **instrumentality**, or **government-owned or controlled corporations**, or a local government or a distinct unit therein.<sup>10</sup>  
(*Emphasis supplied*)

From the foregoing definition, it is clear that an “agency” can mean to include “instrumentalities” of the government, as well as GOCCs.

The Administrative Code likewise provides a definition of a “government-owned or controlled corporation”, to wit:

- (13) “*Government-owned or controlled corporation*” refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.<sup>11</sup>

It bears emphasis that the above definition, among many others during the time of the promulgation of G.R. No. 90482,<sup>12</sup> has already been superseded by the definition of a GOCC under Section 3(o) of R.A. No. 10149.

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<sup>10</sup> Sec. 2(4), Introductory Provisions, Exec. Order No. 292 (s.1987).

<sup>11</sup> Sec. 2(13), Introductory Provisions, Exec. Order No. 292 (s.1987).

<sup>12</sup> See Exec. Order No. 518 (s.1979); Admin. Order No. 59 (s.1988).

And as stated above, an “instrumentality” under the Administrative Code of 1987 is defined as:

- (10) Instrumentality refers to an agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions, and government-owned or controlled corporations.<sup>13</sup>

**7. Executive Order No. 596, s.2006.** – With the promulgation by the Supreme Court of *MIAA v. Court of Appeals*, which defined “GICP/GCE”, the President issued Executive Order No. 596, providing that the “OGCC shall likewise be the principal law office of [GICPs/GCEs].”<sup>14</sup> From this it can be inferred that prior to such issuance, GICPs/GCEs could not have been represented by the OGCC because the same were not covered within the term “GOCC” as defined in the Administrative Code of 1987 and other existing laws at the time.

**8. G.R. No. 90482 Statutorily Overturned.** – Judicial decisions may be superseded by subsequent legislative enactments.<sup>15</sup> With the enactment of R.A. 10149, the old definitions of a “GOCC” during the promulgation of *Republic v. Court of Appeals* no longer apply, and “GOCCs” by definition now include “GICPs”.

The Supreme Court classified the SRA as an “agency”, which includes “instrumentalities”, which in turn subsume “GICPs”. Thus, the SRA as a government agency could also be a GICP, which under R.A. 10149 is considered a GOCC within its coverage.

As will be subsequently shown, the pronouncement by the Supreme Court that the SRA is not a GOCC has already been superseded by the enactment of R.A. 10149.

**9. Powers and Functions.** – Under its Charter, the SRA is vested with the following powers and functions:

- (A) To recommend the establishment of a sugar production coefficient and a production quota which shall be attached to the land for each planter;
- (B) To **institute regulations** for implementing, controlling and monitoring the production quotas;
- (C) To establish domestic, export and reserve allocations;

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<sup>13</sup> Sec. 2(4), Introductory Provisions, Exec. Order No. 292 (s.1987).

<sup>14</sup> Sec. 1, Exec. Order No. 596 (s.2006).

<sup>15</sup> See *Lopez v. COMELEC*, G.R. No. 182701, 23 July 2008, 559 SCRA 696 (2008); *Penera v. COMELEC*, G.R. No. 181613, 11 September 2009, 599 SCRA 609 (2009).

- (D) To explore and expand the domestic market and foreign markets for sugar and by-products, to assure mutual benefits to consumers and producers, and to promote and maintain a proper balance of production of sugar and its by-products;
- (E) To **institute, implement and regulate** an orderly system of que-danning, disposition and withdrawals of various forms of sugar from warehouses;
- (F) To evaluate and recommend to the President new projects involving production of sugar and its by-products and other products derived from sugarcane and sugar;
- (G) To **issue permits and licenses** and collect corresponding fees and levies on the processing and manufacture of sugar and its by-products and other products derived from sugarcane and sugar;
- (H) To **enter, make and execute routinary contracts** as may be necessary for or incidental, to the attainment of its purposes between any persons, firm, public or private, and the Government of the Philippines;
- (I) To **do all such other things, transact such other businesses** and perform such functions directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the Sugar Regulatory Administration.<sup>16</sup> (*Emphasis supplied*)

**10. The SRA Is a GICP.** – The SRA comes within the definition of a “GICP” as laid down in the case of *MIAA v. Court of Appeals*:

**10.1. Vested with Corporate Powers:** As can be gleaned from its powers and functions, the SRA is a government instrumentality vested with corporate powers.

“Corporate power” is defined as “a corporation’s capacity or right to do certain acts or engage in certain activities, such as to sue or be sued, to enter into contracts, to borrow money, and to do such other things as are necessary to obtain its purposes.”<sup>17</sup> Section 36 of the Corporation Code of the Philippines<sup>18</sup> enumerates the powers and capacity of corporations, to wit:

Sec. 36. *Corporate powers and capacity.* – Every corporation incorporated under this Code has the power and capacity:

1. To sue and be sued in its corporate name;
2. Of succession by its corporate name for the period of time stated in the articles of incorporation and the certificate of incorporation;
3. To adopt and use a corporate seal;
4. To amend its articles of incorporation in accordance with the provisions of this Code;

<sup>16</sup> Sec. 2, Exec. Order No. 18 (s.1986).

<sup>17</sup> FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS §2475 (1987).

<sup>18</sup> Batas Pambansa Blg. 68.

5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code;

6. In case of stock corporations, to issue or sell stocks to subscribers and to sell treasury stocks in accordance with the provisions of this Code; and to admit members to the corporation if it be a non-stock corporation;

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;

8. To enter into merger or consolidation with other corporations as provided in this Code;

9. To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;

10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees; and

11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.

The SRA is granted by its Charter the power to enter, make and execute routinary contracts as well as do all such other things and transact such other businesses for the attainment of its purposes.

This is also clear from Section 4 of SRA's Charter, which provides that "all corporate powers of the Sugar Regulatory Administration shall be vested in, and exercised by, the Sugar Board."

In *Republic v. Court of Appeals*, the Supreme Court also declared that the SRA possesses the corporate power to sue and be sued, though it is not specifically enumerated in its Charter. According to the Court, "this power can be implied from its powers to make and execute routinary contracts."

**10.2. Performs Governmental Functions:** The SRA also performs governmental functions, such as regulation and research and policy support services for the sugar industry. Among its objectives is "to institute an orderly system in sugarcane production for the stable, sufficient and balanced production of sugar" and "to undertake such relevant studies as may be needed in the formulation of policies."<sup>19</sup>

**10.3. Enjoys Operational Autonomy:** The SRA exists by virtue of a Charter, and as an attached agency, the SRA enjoys operational

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<sup>19</sup> Sec. 3, Exec. Order No. 18 (s.1986).

autonomy as the Secretary of Agriculture sits as Chairman for policy and program coordination.<sup>20</sup>

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

11. From the foregoing, it is evident that the SRA as an agency of government vested by law with special functions and jurisdiction, is endowed with corporate powers, and enjoys operational autonomy through its Charter. It, thus, falls within the definition of a GICP/GCE<sup>21</sup> within the purview of R.A. No. 10149 and is therefore within the jurisdiction of the Commission.

Thus, it is recommended that the SRA be classified as a GOCC, in accordance with the provisions of R.A. No. 10149.

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<sup>20</sup> See *Boy Scouts of the Philippines v. COA*, G.R. No. 177131, 07 June 2011, 651 SCRA 146 (2011).

<sup>21</sup> See *also* *MIAA v. Court of Appeals*, G.R. No. 155650, 20 July 2006, 495 SCRA 591 (2006).