



## GCG MEMORANDUM CIRCULAR NO. 2015 – 02

**SUBJECT : GUIDELINES IN THE CLASSIFICATION OF GOCCS INTO THE “IN-ACTIVE / NON-OPERATIONAL” STATUS**

**DATE : 16 APRIL 2015**

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### 1. PURPOSE, LEGAL AUTHORITY AND COVERAGE

The Circular covers the underlying principles, policies and procedures covering the exercise by the Governance Commission of its mandate under Sections 5(a) and 5(b) of Republic Act (R.A.) No. 10149 to: (a) ascertain whether a GOCC should be classified as ***In-Active/Non-Operational***; ***De-Activation*** of an operational GOCC; and ***Re-Activation*** of GOCCs previously classified as In-Active/Non-Operational.

The process of classifying as In-Active/Non-Operational and Re-Activation shall cover all GOCCs within the coverage of R.A. No. 10149.

### 2. GUIDING PRINCIPLES

The Governance Commission shall be guided by the standards set forth under Section 5(a) of R.A. No. 10149 when determining whether to classify a GOCC as In-Active/Non-Operational, and when a GOCC, previously classified as In-Active/Non-Operational, will be Reactivated, thus:

*SEC.5. Creation of the Governance Commission for Government-Owned or -Controlled Corporations. — There is hereby created a central advisory, monitoring, and oversight body with authority- to formulate, implement and coordinate policies to be known as the Governance Commission for Government-Owned or -Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. The GCG shall have the following powers and functions:*

(a) 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. For this purpose, the GCG shall be guided by any of the following standards:

- (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-à-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 functional, purpose or nature of operations of any group of GOCCs requires consolidation under a holding company.

### 3. DEFINITION OF TERMS

- (a) ***"In-Active/Non-Operational"*** refers to the status or classification of a GOCC, whether Chartered or Nonchartered, where it has ceased to be a going concern by the fact that it has become dormant and non-operational, or in the case of a Nonchartered GOCC, that its charter has been suspended or revoked by the Securities and Exchange Commission (SEC).
- (b) ***"De-Activation"*** refers to the process of ceasing the operations of a GOCC, whether Chartered or Nonchartered, and classifying it as "In-Active/Non-Operational," which means that although its juridical personality remains existing and unaffected, nonetheless, it ceases to be a business enterprise or a going concern.
- (c) ***"Re-Activation"*** refers to the process of including a GOCC formerly classified as "In-Active/Non-Operational," into the official list of active GOCCs whose mandates shall be pursued as a going concern.

### 4. CLASSIFICATION OF GOCCs AS IN-ACTIVE. – The Governance Commission may *motu proprio* evaluate any GOCC under R.A. No. 10149 and classify it as being in fact In-Active/Non-Operational based on the following grounds:

- (a) Continuous non-operation for at least three (3) years;
- (b) For Nonchartered GOCCs, the following additional grounds:
  - i. Failure to file and register its By-laws with the SEC;
  - ii. Failure to organize and commence business within two (2) years from incorporation;<sup>1</sup>
  - iii. The corporate franchise or certificates of incorporation has been suspended or revoked by the SEC;<sup>2</sup>
  - iv. The operations conducted are contrary to or beyond the

<sup>1</sup> Batas Pambansa Bilang 68, Corporation Code of the Philippines, Section 22. *Effects on non-use of corporate charter and continuous inoperation of a corporation.* - If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved. However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation. This provision shall not apply if the failure to organize, commence the transaction of its businesses or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission.

<sup>2</sup> *Id.*

mandates of its charter.

In the event the Governance Commission determines that a GOCC is in fact In-Active/Non-Operational, it shall formally issue the corresponding Memorandum Order (MO) to that effect in order to officially notify other government agencies and the general public of the actual status of the GOCC.

## 5. DE-ACTIVATION OF GOCCs

5.1. **Grounds for De-Activation.** – The Governance Commission may De-Activate a GOCC and thereafter classify it as In-Active/Non-Operational under Section 4 above or whenever it meets any of the grounds for abolition under R.A. No. 10149.

5.2. **Initiation of the Evaluative Process for De-Activation.** – Apart from the power of the Governance Commission under Section 5 (a) and (b) of R.A. No. 10149 to *motu proprio* evaluate any GOCC under its supervision for possible classification into In-Active/Non-Operational status, the following may initiate the evaluation of a GOCC for possible De-Activation, thus:

- (a) Directive from the President of the Philippines, in the exercise of supervisory powers over the GCG, and the power to reorganize the Executive Department as provided in the Administrative Code of 1987;
- (b) Request from the Supervising Agency; or
- (c) Request from the Parent GOCC.

Any other request for the De-Activation of a GOCC must be accompanied by a favorable recommendation from any of the immediately preceding agencies and/or the President of the Philippines. Without such favorable recommendation, the Governance Commission may conduct *motu proprio* an evaluation of the request or refer the matter for comment to the Supervising Agency and/or the Parent GOCC.

5.3. **Required Documents for an Application for Evaluation.** – A request for the evaluation of a GOCC shall be in the form of a written application letter from the Supervising Agency and/or Parent GOCC, and accompanied by the following documents:

- (a) A comprehensive study/report showing the existence of any of the grounds for the classification of the GOCC as In-Active/Non-Operational;
- (b) Certified copies of the charter, articles of incorporation and by-laws of the GOCC;
- (c) Latest General Information Sheet (GIS) for a Nonchartered GOCC;
- (d) Audited Financial Statements for the last five (5) years stamped and received by the Bureau of Internal Revenue (BIR) or certified true copies of the same from the Commission on Audit (COA);
- (e) Action Plan for the Personnel of the GOCC, in the event that the subject GOCC is still operational; and

(f) Other documents as may be required on the Citizen's Charter on the Governance Commission's website.

- 5.4. **Coordination with Supervising Agency / Parent GOCC.** – The Governance Commission shall conduct an evaluation of a GOCC for purposes of possible De-Activation in coordination with the GOCC's Supervising Agency, Parent GOCC, and the subject GOCC.
- 5.5. **Formal De-Activation of a GOCC.** – In the event the Governance Commission determines that there is sufficient basis to De-Activate and classify a GOCC as In-Active/Non-Operational, it shall formally issue the corresponding Memorandum Order (MO) to that effect.

The Governance Commission shall formally transmit the MO and notify the following government agencies of GCG's determination and reclassification of a GOCC as In-Active/Non-Operational:

- (a) The Supervising Agency;
- (b) The Parent GOCC, when applicable; and
- (c) The CEO and Governing Board of the De-Activated GOCC, whenever possible.

In addition, for Nonchartered GOCCs, a copy of the MO shall be formally transmitted to the SEC. The SEC shall also be notified of any instructions from the Supervising Agency and/or the Office of the President for the retention of the juridical personality of the In-Active/Non-Operational GOCC.

- 5.6. **Legal Effects of Classification of a GOCC as In-Active/Non-Operational.** – The issuance and formal transmittal of the MO shall have the following legal effects:
- (a) The De-Activated GOCC formally ceases to be a going concern and shall have no power or competence to enter into any contract or transactions, which seeks to pursue its ordinary course of business.
  - (b) The Governing Board, if still constituted, shall undertake measures to wind-down the affairs of the GOCC and to preserve its assets to await the final disposition thereof.
  - (c) The GOCC shall maintain any personnel it may have to assist in the winding-down of the corporate affairs, and no further hiring of any personnel shall be allowed.
  - (d) The GOCC ceases to be entitled to a Corporate Operating Budget (COB), nor avail of the benefits provided for in the GOCC Sector, such as Collective Negotiation Agreement (CNA), Performance-Based Bonus (PBB) and Performance-Based Incentives (PBI).
  - (e) The GOCC is deemed under evaluation for formal abolition under the provisions of R.A. No. 10149.

- 5.7. **Establishment of a Technical Working Group (TWG).** – Within 30 working days from the issuance of a GCG-MO classifying a GOCC as In-Active/Non-Operational, the Governance Commission will establish a TWG, primarily tasked to do the following:
- (a) Recommend to the Governance Commission, not later than 60 working days from the constitution of the TWG, the dispositive actions with reference to the function, personnel, assets and liabilities of the GOCC;
  - (b) Implement the disposition of functions, assets and liabilities, as well as programs and projects, if any, as approved by the Governance Commission;
  - (c) Implement the action plan for the personnel of the GOCC, in the event the subject GOCC is still operational;
  - (d) Safeguard the assets of the concerned GOCC pending their disposition;
  - (e) Ensure safeguarding of books of accounts, financial records, and other pertinent records for COA auditing purposes;
  - (f) Cause the filing of criminal and/or administrative cases against any party who may be found liable for any wrong doing in the course of audit of the GOCC's operations; and
  - (g) Perform other tasks as may be assigned by the Governance Commission.

## 6. RE-ACTIVATION OF GOCCs

- 6.1. GOCCs previously classified as In-Active/Non-Operational and which have not been abolished may be reactivated and reclassified through an MO from the Governance Commission, for the purpose of reviving their operations as provided under their Charters and/or Articles of Incorporation.
- 6.2. The process of Re-Activation shall follow the same procedures as the process for De-Activation, but the application for Re-Activation must also be accompanied by a study showing the feasibility of reviving the operations of the De-Activated GOCC.
- 6.3. For Nonchartered GOCCs, the re-activation process shall be subject to further compliance with the mandatory provisions of the Corporation Code of the Philippines<sup>3</sup> on the filing of documentary requirements with the SEC.<sup>4</sup>
- 6.4. The formal Re-Activation of a GOCC shall be implemented through an MO.

<sup>3</sup> Batas Pambansa Bilang 68.

<sup>4</sup> R.A. No. 8799, Securities Regulation Code, Section 17 and Section 18.

7. **EFFECTIVITY**

This Circular shall take effect immediately upon its publication in a newspaper of General Circulation and the Governance Commission's website at [www.gcg.gov.ph](http://www.gcg.gov.ph).



**CESAR L. VILLANUEVA**  
*Chairman*

  
**CESAR V. PURISIMA**  
*DOF Secretary*  
**026219**  
**MA ANGELA E. IGNACIO**  
*Commissioner*  
**FLORENCIO B. ABAD**  
*DBM Secretary*  
**RAINIER B. BUTALID**  
*Commissioner*