



**GCG MEMORANDUM CIRCULAR No. 2012-3 .**

**SUBJECT : STATUS OF HOLDOVER AND ACTING APPOINTIVE DIRECTORS/TRUSTEES IN GOCC BOARDS AND REQUIRING THE SUBMISSION OF INFORMATION ON THEIR RESPECTIVE QUALIFICATIONS**

**DATE : 08 FEBRUARY 2012**

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**1. LEGAL BACKGROUND**

- 1.1. Section 15 of Republic Act No. 10149, otherwise known as the "GOCC Governance Act of 2011" (RA No. 10149), provides that an appointive director or trustee (hereinafter "Appointive Director") to any covered Government-owned or -controlled (GOCC) shall be appointed by the President of the Philippines from a shortlist prepared by the Governance Commission for GOCCs (GCG).
- 1.2. Section 17 of RA No. 10149 limits the term of Appointive Directors to one (1) year "unless sooner removed for cause: *Provided, however,* That the Appointive Director shall continue to hold office until the successor is appointed."
- 1.3. Section 17 also provides that "Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a term of office until June 30, 2011, unless sooner replaced by the President."
- 1.4. The exigency of public service requires that there be a definitive legal characterization of the positions of incumbent Appointive Directors in accordance with the provisions of RA No. 10149, and that the Boards to which they belong must be made accountable for the performance of their companies.
- 1.5. There is a need to lay down the rules that shall govern the terms and manner of preparation of the shortlists of candidates for appointment by the President of the Philippines of the Appointive Directors of GOCCs covered by RA No. 10149.

## **2. STATUS OF INCUMBENT APPOINTIVE DIRECTORS**

- 2.1. Under the "*Hold-over Principle*" in Philippine Corporation Law,<sup>1</sup> in the event no new Board is elected and qualified after the official term of the Board of Directors, the existing Board, if still constituting a quorum, is still a legitimate Board with full authority to bind the corporation.<sup>2</sup>
- 2.2. All Appointive Directors of GOCCs whose term expired last 30 June 2011 by virtue of the provision in Section 17 of RA No. 10149, as well as all those appointed thereafter in an acting capacity, have been legally deemed to be on holdover capacity, having the full powers and prerogatives of regular Appointive Directors until they shall have either been re-appointed or replaced, as the case may be.
- 2.3. All such Appointive Directors shall be evaluated by GCG Search Committee for possible re-appointment, and when found to continue to be fit in accordance with the original assessment when they were first appointed, their names shall be formally be submitted as part of the shortlists for appointment by the President for the "Term of Office" as discussed hereunder.

## **3. OFFICIAL TERM OF OFFICE**

- 3.1. Section 17 of RA No. 10149 establishes the "Official Term of Office" of the Boards of Directors as follows:
  - (a) ***For a period of one (1) year.*** "Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause;" and
  - (b) ***Starting point of 1 July of each year, and ending on 30 June of the following year.*** "Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a *term of office until June 30, 2011*, unless sooner replaced by the President."

When Section 17 provided that the "term of office" of all incumbent Appointive Directors shall end on "June 30, 2011," it established the Official Term of Office for all Appointive Directors for GOCCs covered by RA No. 10149 begins on 1 July of each year and ending on 30 June of the following year.

- 3.2. The "Term of Office" of Appointive Directors should not be confused with their "Tenure", which officially begins from the time they are appointed by the President and qualified into office, and it may be less than a year, as when they are replaced by the President for cause, or may even exceed one year when they continue to remain with the Board under a hold-over capacity until their successors are qualified and appointed.

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<sup>1</sup> RA No. 10149, Sec. 30 provides: "The provisions of the 'Corporation Code of the Philippines' and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs."

<sup>2</sup>SEC Opinion No. 06-18, 20 March 2006.

#### **4. REQUIRED SUBMISSION OF SUPPORTING DOCUMENTS**

- 4.1. Each of the incumbent GOCC Boards, through their Chairman and CEO, shall submit to the GCG the following documents on or before **15 March 2012**:
- a. Complete Listing, with Bio-data or Bio-Write-Up of the incumbent (i) Directors/Trustees; (ii) Chairperson; (iii) President or Chief-Executive Officer (CEO); and (iv) including those appointed to the Boards of Affiliates and Subsidiaries;
  - b. Report of the Highlights and Achievements of the GOCC for calendar year 2011;
  - c. Report of Operations and Financial Condition of the GOCC in 2011, accompanied by covering Financial Statements, whether or not audited, covering said period;
  - d. Corporate Plans for calendar year 2012.
  - e. Official assessment of the performance of the Board, and each of the members and CEO for the calendar year 2011, as certified separately by the Chairman and the CEO, including adoption and achievements of strategy maps, charter statements and performance commitments;
  - f. Other corporate documents adopted by the Board during its incumbency that would allow the Commission a better manner of assessing the performance of the members of the Board, including the adoption of Code of Ethics for the Directors, Officers and Employees, CSR Projects.
  - g. Clearances from the following government sectors: Office of the Ombudsman, Civil Service Commission, Sandiganbayan and the National Bureau of Investigation (NBI).
  - h. Compliance with other requirements provided for by law, or the specific Charters of the GOCCs.
- 4.2. Non submission or incomplete submission will be considered as disinterest on the part of the Directors/Trustees to be considered for re-appointment.

BY AUTHORITY OF THE COMMISSION:



**CESAR L. VILLANUEVA**  
*Chairman*



**MA. ANGELA E. IGNACIO**  
*Commissioner*



**RAINIER B. BUTALID**  
*Commissioner*