

# Republic Act No. 10149

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## REPUBLIC OF THE PHILIPPINES

### Congress of the Philippines

#### Metro Manila

#### Fifteenth Congress

#### First Regular Session

Begun and held in Metro Manila, on Monday, the twenty-sixth day of July, two thousand ten.

#### [Republic Act No. 10149]

### **AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR - CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

#### CHAPTER I

#### General Provisions

SECTION 1. *Short Title.*—This Act shall be known as the “GOCC Governance Act of 2011”.

SEC. 2. *Declaration of Policy.*—The State recognizes the potential of government-owned or -controlled corporations (GOCCs) as significant tools for economic development. It is thus the policy of the State to actively exercise its ownership. rights in GOCCs and to promote growth by ensuring that operations are consistent with national development policies and programs.

Towards this end, the State shall ensure that:

- (a) The corporate form of organization through which government carries out activities is utilized judiciously;
- (b) The operations of GOCCs are rationalized and monitored centrally in order that government assets and resources are used efficiently and the government exposure to all forms of liabilities including subsidies is warranted and incurred through prudent means;
- (c) The governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness;
- (d) A reporting and evaluation system, which will require the periodic disclosure and examination of the operations and management of the GOCCs, their assets and finances, revenues and expenditures, is enforced;
- (e) The governing boards of every GOCC and its subsidiaries are competent to carry out its functions, fully accountable to the State as its fiduciary, and acts in the best interest of the State;
- (f) Reasonable, justifiable and appropriate remuneration schemes are adopted for the directors/trustees, officers and employees of GOCCs and their subsidiaries to prevent or deter the granting of unconscionable and excessive remuneration packages; and
- (g) There is a clear separation between the regulatory and proprietary activities of GOCCs, in order to achieve a level playing field with corporations in the private sector performing similar commercial activities for the public.

SEC. 3. *Definition of Terms.*—

- (a) *Affiliate* refers to a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned or controlled, directly or indirectly, by the GOCC.
- (b) *Appointive Director* refers to:

(1) In the case of chartered GOCCs, all members of its Board of Directors/Trustees who are not *ex officio* members thereof;

(2) In the case of nonchartered GOCCs, members of its Board of Directors/Trustees whom the State is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and

(3) In the case of subsidiaries and affiliates, members of its Board of Directors/Trustees whom the GOCC is entitled to nominate to the extent of its percentage shareholdings in such subsidiary or affiliate.

(c) *Board of Directors/Trustees* or *Board* refers to the governing body that exercises the corporate powers of a GOCC.

(d) *Breakthrough Results* refer to the achievement of corporate goals or other performance indicators as determined by the GOCC or its supervising department.

(e) *Charter Statement* refers to a statement of the GOCC's vision, mission and core values.

(f) *Chartered GOCC* refers to a GOCC, including Government Financial Institutions, created and vested with functions by a special law.

(g) *Chief Executive Officer (CEO)* refers to the highest ranking corporate executive, who could be the President or the General Manager, Chairman or the Administrator of a GOCC.

(h) *Department* refers to an executive department created by law. This shall include any instrumentality having or assigned the rank of a department, regardless of its name or designation.

(i) *Ex Officio Board Member* refers to any individual who sits or acts as a member of the Board of Directors/ Trustees by virtue of one's title to another office, and without further warrant or appointment.

(j) *Fit and Proper Rule* refers to the standard for determining whether a member of the Board of Directors/ Trustees or CEO is fit and proper to hold a position in a GOCC which shall include, but not be limited to, standards on integrity, experience, education, training and competence.

(k) *Government Agency* refers to any of the various units of the Government of the Republic of the Philippines, including a department, bureau, office, instrumentality or GOCC, or a local government or a distinct unit therein.

(l) *Government Corporate Governance Standards* refer to a set of principles derived from law and practices, rules and standards prescribed by the Governance Commission for Government-Owned or -Controlled Corporations (GCG) that generate long-term and desirable economic value for the State. It shall also refer to a system whereby shareholders, creditors, and other stakeholders of a corporation ensure that management enhances the value of the corporation as it competes in an increasingly global market place.

(m) *Government Financial Institutions (GFIs)* refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and, which are either: (1) registered with or directly supervised by the Bangko Sentral ng Pilipinas; or (2) collecting or transacting funds or contributions from the public and places them in financial instruments or assets such as deposits, loans, bonds and equity including, but not limited to, the Government Service Insurance System and the Social Security System.

(n) *Government Instrumentalities with Corporate Powers (GICP)/Government Corporate Entities (GCE)* refer to 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, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).

(o) *Government-Owned or -Controlled Corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however,* That for purposes of this Act, the term "GOCC"- shall include GICP/GCE and GFI as defined herein.

(p) *Nonchartered GOCC* refers to a GOCC organized and operating under Batas Pambansa Bilang 68, or "The Corporation Code of the Philippines".

(q) *Officers* refer to the corporate officers of the GOCC as provided in its charter or bylaws, such as the CEO, Chief Financial Officer, Chief Investment Officer, President, Vice President, General Manager, Treasurer and Corporate Secretary.

(r) *Ownership Manuals* refer to guidelines and rules pertaining to the ownership by the State or corporations and enterprises or the exercise of such ownership governing the GOCCs or any classification thereof.

(s) *Per Diems* refer to the compensation granted to members of the Board of Directors or Trustees of a GOCC for actual attendance in meetings.

(t) *Performance Evaluation System* refers to the process of appraising the accomplishments of GOCCs in a given fiscal year based, on set performance criteria, targets and weights.

(u) *Performance Scorecard* refers to a governance and management tool forming part of the performance evaluation system which consists of a set of measures, targets and initiatives that facilitate the achievement of breakthrough results and performance through the effective and efficient monitoring and coordination of the strategic objectives of the GOCC.

(v) *President* refers to the President of the Republic of the Philippines.

(w) *Related Corporation* refers to a subsidiary or affiliate of a GOCC.

(x) *Secretary* refers to the person vested with the authority and responsibility for the exercise of the mandate of the Department, for the discharge of its powers and functions, and who shall have supervision and control of the Department.

(y) *Strategy Map* refers to an integrated set of strategic choices or objectives drawn by the governing body, the successful execution of which results in the achievement of the GOCC's vision in relation to its mission or purpose for having been created.

(z) *Subsidiary* refers to a corporation where at least a majority of the outstanding capital stock is owned or controlled, directly or indirectly, through one or more intermediaries, by the GOCC.

SEC. 4. *Coverage.*—This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided, That* in economic zone authorities and *research* institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG.

## CHAPTER II

### **The Governance Commission for Government-Owned or -Controlled Corporations (GCG)**

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 require consolidation under a holding company.

Upon determination by the GCG that it is to the best interest of the State that a GOCC should be reorganized, merged, streamlined, abolished or privatized, it shall:

(i) Implement the reorganization, merger or streamlining of the GOCC, unless otherwise directed by the President; or

(ii) Recommend to the President the abolition or privatization of the GOCC, and upon the approval of the President, implement such abolition or privatization, unless the President designates another agency to implement such abolition or privatization.

(b) Classify GOCCs into: (1) Developmental/Social Corporations; (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;

(c) In consultation with the relevant government agencies and stakeholders, adopt within one hundred eighty (180) days from its constitution, an ownership and operations manual and the government corporate standards governing GOCCs: *Provided*, That the government corporate governance standards applicable to GOCCs shall be no less rigorous than those required by the Philippine Stock Exchange or the Securities. and Exchange Commission of listed companies, or those required by the Bangko Sentral ng Pilipinas or the Insurance Commission for banking institutions and insurance companies, as the case may be. The manual shall be consistent with the Medium-Term Philippine Development Plan issued by the National Economic and Development Authority (NEDA) and shall include:

(1) Objectives of State ownership;

(2) Role of national government in the governance of GOCCs;

(3) Modes of implementation of the ownership policy;

(4) Guidelines on the monitoring of the operations of all GOCCs including their Related Corporations. These shall include Strategy Maps, Charter Statements, Performance Commitments and such other mechanisms;

(5) The roles, relationships and responsibilities of the State, the Government Agencies to which the GOCC is attached, and the GOCC;

(6) Disclosure and transparency requirements;

(7) Code of Ethics of Directors and Officers;

(8) Creation of board committees and similar oversight bodies;

(9) Integrated corporate reporting system;

(10) Statement of the social responsibilities of the GOCC; and

(11) Such other matters as the GCG may deem proper to include in the ownership policy.

(d) Without prejudice to the filing of administrative and criminal charges, recommend to the Board of Directors or Trustees the suspension of any member of the Board of Directors or Trustees who participated by commission or omission in the approval of the act giving rise to the violation or noncompliance with the ownership manual for a period depending on the nature and extent of damage caused, during which period the director or trustee shall not be entitled to any emolument;

(e) In addition to the qualifications required under the individual charter of the GOCCs and in the bylaws of GOCCs. without original charters, the GCG shall identify necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors;

(f) Establish the performance evaluation systems including performance scorecards which shall apply to all GOCCs in general and to the various GOCC classification;

(g) Conduct periodic study, examination, evaluation and assessment of the performance of the GOCCs, receive, and in appropriate cases, require reports on the operations and management of the GOCCs including, but not limited to, the management of the assets and finances of the GOCCs;

(h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;

(i) Provide technical advice and assistance to the government agencies to which the GOCCs are attached in setting performance objectives and targets for the GOCCs and in monitoring GOCCs performance *vis-a-vis* established objectives and targets;

(j) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs. It shall meet at least quarterly to:

(1) Review Strategy Maps and Performance Scorecards of all GOCCs;

(2) Review and assess existing performance-related policies including the compensation/remuneration of Board of Directors/ Trustees and Officers and recommend appropriate revisions and actions; and

(3) Prepare performance reports of the GOCCs for submission to the President.

(k) Prepare a semi-annual progress report to be submitted to the President and the Congress. In its report, the GCG will provide its performance assessment of the GOCCs and recommend clear and specific actions. Within one hundred twenty (120) days from the close of the year, the GCG shall prepare an annual report on the performance of the GOCCs and submit it to the President and the Congress; and

(l) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President in consultation with the Government Agency to which such GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions.

In the performance of its functions under subsections (a), (c), (e), (f), (g), (h) and (1) 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.

SEC. 6. *Composition of the GCG.*—The GCG shall be composed of five (5) members. The Chairman with the rank of Cabinet Secretary and two (2) members with the rank of Undersecretary shall be appointed by the President. The Secretaries of the Department of Budget and Management and the Department of Finance shall sit as *ex officio* members.

SEC. 7. *Powers and Functions of the Chairman.*—The management of the GCG shall be vested in the Chairman who shall have the following powers and duties:

(a) Preside over the meetings of the GCG;

(b) Direct and manage the day-to-day affairs and business of the GCG;

(c) With the approval of the GCG, determine the staffing pattern and the number of personnel of the GCG and define their duties and responsibilities;

(d) With the approval of the GCG, to appoint, remove, suspend, or otherwise discipline for cause, any employee of the GCG; and

(e) Perform such other duties as may be delegated or assigned to him by the GCG from time to time.

### **CHAPTER III**

#### **COMPENSATION AND POSITION CLASSIFICATION SYSTEM FOR GOCCS**

*SEC. 8. Coverage of the Compensation and Position Classification System.*—The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to approval of the President.

*SEC. 9. Position Titles and Salary Grades.*—All positions in the Positions Classification System, as determined by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.

The following principles shall govern the Compensation and Position Classification System:

(a) All GOCC personnel shall be paid just and equitable wages in accordance with the principle of equal pay for work of equal value. Differences in pay shall be based on verifiable Compensation and Position Classification factors in due regard to the financial capability of the GOCC;

(b) Basic compensation for all personnel in the GOCC shall generally be comparable with those in the private sector doing comparable work and must be in accordance with prevailing laws on minimum wages. The total compensation provided for GOCC personnel shall be maintained at a reasonable level with due regard to the provisions of existing compensation and position classification laws including Joint Resolution No. 4, Series of 2009, and the GOCC operating budget; and

(c) A review of the GOCC compensation rates, taking into account the performance of the GOCC, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

SEC. 10. *Additional Incentives.*—The GCG may recommend to the President, incentives for certain position titles in consideration of the good performance of the GOCC: *Provided,* That no incentives shall be granted unless the GOCC has fully paid all taxes for which it is liable, and the GOCC has declared and paid all the dividends required to be paid under its charter or any other laws.

SEC. 11. *Non-diminution of Salaries.*—The Compensation and Position Classification System to be developed and recommended by the GCG and as approved by the President shall apply to all positions, on full or part-time basis, now existing or hereafter created in the GOCC: *Provided,* That in no case shall there be any diminution in the authorized salaries as of December 31, 2010 of incumbent employees of GOCCs, including those exempt under Republic Act No. 6758, as amended, upon the implementation of the Compensation and Position Classification System for GOCCs.

## **CHAPTER IV**

### **BOARD OF DIRECTORS-TRUSTEES-OFFICERS OF GOVERNMENT-OWNED OR –CONTROLLED CORPORATIONS**

SEC. 12. *Coverage.*—The duties, obligations, responsibilities and standards of care provided under this Chapter shall be applicable to all members of the Board of Directors/Trustees and Officers of GOCCs and subsidiaries now existing or hereafter created including government appointed directors in affiliate corporations. These duties, obligations and responsibilities shall be addition to the powers and functions provided in the individual charters or articles of incorporation and by laws of the respective GOCCs.

SEC. 13. *Number of Directors/Trustees.*—The present number of Directors/Trustees provided in the charter of the GOCCs shall be maintained.

SEC. 14. *Ex Officio Alternates.*—The *ex officio* members of the GOCC may designate their respective alternates who shall be the officials next-in-rank to them and whose acts shall be considered the acts of their principals.

SEC. 15. *Appointment of the Board of Directors/Trustees of GOCCs.*—An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees and shall cause the creation of search committees to achieve the same. All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule as defined un this Act and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC. The GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the

number of directors /trustees to be appointed. In the event that the President does not see fit to appoint any of the nominees included in the shortlist, the President shall ask the GCG to submit additional nominees.

SEC. 16. *Fit and Proper.*—All members of the Board, the CEO and other officers of the GOCCs including appointive directors in subsidiaries and affiliate corporations shall be qualified by the Fit and Proper Rule to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.

To maintain the quality of management of the GOCCs, the GCG, in coordination with the relevant government agencies shall, subject to the approval of the President, prescribe, pass upon and review the qualifications and disqualifications of individuals appointed as officers, directors or elected CEO of the GOCC and shall disqualify those found unfit.

In determining whether an individual is fit and proper to hold the position of an officer, director or CEO of the GOCC, due regard shall be given to one's integrity, experience, education, training and competence.

SEC. 17. *Term of Office.*—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: *Provided, however,* That the Appointive Director shall continue to hold office until the successor is appointed. An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC.

Appointed to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 15 of this Act.

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: *Provided, however,* That the incumbent CEOs and appointive members of the Board shall continue in office until the successor have been appointed by the President.

SEC. 18. *The Chief Executive Officer of the GOCC.*—The CEO or the highest-ranking officer provided in the charters of the GOCCs, shall be elected annually by the members of the Board from among its ranks. The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.

SEC. 19. *Fiduciary Duties of the Board and Officers.*—As fiduciaries of the State, members of the Board of Directors/Trustees and the Officers of GOCCs have the legal obligation and duty to always act in the best interest of the GOCC, with utmost good faith in all its dealings with the property and monies of the GOCC.

The members of the Board and Officers of GOCCs shall:

- (a) Act with utmost and undivided loyalty to the GOCC;
- (b) Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;
- (c) Avoid conflicts of interest and declare an interest they may have in any particular matter before the Board;
- (d) Apply sound business principles to ensure the financial soundness of the GOCC; and
- (e) Elect and/or employ only Officers who are fit and proper to hold such office with due regard to the qualifications, competence, experience and integrity

Where a member of the Board or an Officer, by virtue of the office, acquires or by virtue of the office, acquires or receives for oneself a benefit or profit, of whatever kind or nature including, but not limited to, the acquisition of shares in corporations where the GOCC has an interest, using the properties of the GOCC for their own benefit, receiving commission on contracts from the GOCC's assets, or taking advantage of corporate opportunities of the GOCC, all such profits or benefits shall be subject to restitution under Section 24 of this Act, without prejudice to any administrative, civil or criminal action against members of the Board of Directors/Trustees or Officers. This provision shall be applicable notwithstanding the fact that such member of the Board or Officer risked one's own funds in the venture.

SEC. 20. *Trustee Relation to the Properties, Interests and Monies of the GOCC.*—Except for the *per diem* received for the actual attendance in board meetings and the reimbursement for actual and reasonable expenses and incentives as authorized by the GCG, any and all realized and unrealized profits and/or benefits including, but not limited to, the share in the profits, incentives of members of the Board or Officers in excess of the authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where the GOCC is a stockholder or investor, and any benefit from the performance of members of the Board or Officers of the Corporation acting for and in behalf of the GOCC in dealing with its properties, investments in other corporations, management of subsidiaries and other interest, are to be held in trust by such member of the Board or Officer for the exclusive benefit of the GOCC represented.

SEC. 21. *Care, Diligence and Skill in the Conduct of the Business of the GOCC.*—The members of the Board and the Officers must exercise extraordinary diligence in the conduct of the business and in dealing with the properties of the GOCC. Such a degree of diligence requires using the utmost diligence of every cautious person with due regard for all circumstances.

SEC. 22. *Power of the Board of Directors/Trustees to Discipline, Remove Officers of the GOCC.*—Subject to existing civil service laws, rules and regulations, the Board shall have the authority to discipline the CEO, or order the removal from office, upon a majority vote of the members of the Board who actually took part in the investigation and deliberation.

SEC. 23. *Limits to Compensation, per Diems, Allowances and Incentives.*—The charters of each of the GOCCs to the contrary notwithstanding, the compensation, *per diems*, allowances and incentives of the members of the Board of Directors/Trustees of the GOCCs shall be determined by the GCG using as a reference, among others, Executive Order No. 24 dated February 10, 2011: *Provided, however, That Directors/Trustees shall not be entitled to retirement benefits as such directors/trustees.*

In case of GOCCs organized solely for the promotion of social welfare and the common good without regard to profit, the total yearly *per diems* and incentives in the aggregate which the members of the Board of such GOCCs may receive shall be determined by the President upon the recommendation of the GCG based on the achievement by such GOCC of its performance targets.

SEC. 24. *Restitution.*—Upon the determination and report of the Commission on Audit (COA) that properties or monies belonging to the GOCC are in the possession of a member of the Board or Officer without authority, or that profits are earned by the member of the Board or Officer in violation of the fiduciary duty, or the aggregate *per diems*, allowances and incentives received in a particular year are in excess of the limits provided under the Act, the member of the Board or Officer, receiving such properties or monies shall return the same to the GOCC.

Failure to make the restitution within thirty (30) days after a written demand has been served shall, after trial and final judgment, be punished by an imprisonment of one (1) year and a fine equivalent to twice the amount to be restituted, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

## **CHAPTER V**

### **DISCLOSURE REQUIREMENTS**

SEC. 25. *Full Disclosure.*—All GOCCs shall maintain a website and post therein for unrestricted public access:

- (a) Their latest annual audited financial and performance report within thirty (30) days from receipt of such report;
- (b) Audited financial statements in the immediate past five (5) years;
- (c) Quarterly, annual reports and trial balance;
- (d) Current corporate operating budget;
- (e) Complete compensation package of all the board members and officers, including travel, representation, transportation and any other form of expenses or allowances;
- (f) Local and foreign borrowings;
- (g) Performance scorecards and strategy maps;
- (h) Government subsidies and net lending;
- (i) All borrowings guaranteed by the government; and
- (j) Such other information or report the GCG may require.

SEC. 26. *Special Audit.*—

- (a) The thirty (30) GOCCs with the highest total assets shall be subject to periodic special audit by the COA. The periodic audit shall, at the minimum make a determination whether:
  - (1) The accounting records of the GOCCS are complete and in accordance with generally accepted accounting practices and standards; and
  - (2) The statements prepared from the accounts present fairly and comprehensively their GOCCs financial position and the results of its financial operations.
- (b) As may be necessary or convenient in the performance by the GCG of its functions, the Chairman of the GCG may direct at any time a special COA audit of any other GOCC for any specific purpose or when authorized by law, direct an audit by independent auditors.

## CHAPTER VI

### CREATION AND ACQUISITION OF A GOCC OR RELATED CORPORATION

SEC. 27. *Requisites for the Creation of a New GOCC or Related Corporation under The Corporation Code.*—A government agency seeking to establish a GOCC or Related Corporation under “The Corporation Code of the Philippines” shall submit its proposal to the GCG for review and recommendation to the President for approval before registering the same with the Securities and Exchange Commission (SEC). The SEC shall not register the articles of incorporation and bylaws of a proposed GOCC or Related Corporation, unless the application for registration is accompanied by an endorsement from the GCG stating that the President has approved the same.

SEC. 28. *Requisites for the Acquisition of Controlling Interest in Another Corporation.*—Any government agency seeking to purchase a corporation or acquire controlling interest therein shall submit its proposal to the GCG for review and approval of the President.

## CHAPTER VII

### MISCELLANEOUS PROVISIONS

SEC. 29. *Appropriations.*—The amount of Ten million pesos (P10,000,000.00) for the initial operation of the GCG shall be source from the Contingent Fund of the President. Subsequent funding requirements shall be included in the annual General Appropriations Act.

SEC. 30. *Suppletory Application of The Corporation Code and Charters of the GOCCs.*—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.

SEC. 31. *Transitory Provision.*—The Privatization Council and Privatization and Management Office created under Executive Order No. 323, Series of 2000, shall continue to implement and finish the privatization of GOCCs that have been identified by the said Privatization Council and approved for privatization by the President prior to the effectivity of this Act: *Provided, however,* That the privatization of said GOCCs hat remain unfinished at the end of every two (2) years after the effectivity of this Act shall be automatically transferred to the GCG which shall continue the privatization of the GOCCs.

SEC. 32. *Repealing Clause.*—The charters of the GOCCs under existing laws and all other laws, executive orders including Executive Order No. 323, Series of 2000, administrative orders, rules, regulations, decrees and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby

revoked, repealed or modified accordingly.

SEC. 33. *Separability Clause.*—Should any provision of this Act be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SEC. 43. *Effectivity.*—This Act shall take effect after fifteen (15) days following its publication in the *Official Gazette* or in two newspapers of general circulation.

Approved,

<b>(SGD.) FELICIANO BELMONTE JR.</b>	<b>(SGD.) JUAN PONCE ENRILE</b>	
<i>Speaker of the House of Representatives</i>	<i>President of the Senate</i>	

This Act which is a consolidation of Senate Bill No. 2640 and House Bill No. 4067 was finally passed by the Senate and the House of Representatives on May 30, 2011 and May 31, 2011, respectively.

<b>(SGD.) MARILYN B. BARUA-YAP</b>	<b>(SGD.) EMMA LIRIO-REZES</b>	
<i>Secretary General House of Representatives</i>	<i>Secretary of the Senate</i>	

**(SGD.) BENIGNO SIMEON C. AQUINO III**

*President of the Philippines*

## RESOURCES

- [PDF]
  - [Republic Act No. 10149, June 6, 2011 \(http://www.gov.ph/downloads/2011/06jun/20110606-RA-10149-BSA.pdf\)](http://www.gov.ph/downloads/2011/06jun/20110606-RA-10149-BSA.pdf)

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