

[PRESIDENTIAL DECREE NO. 2029, February 04, 1986]

DEFINING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND IDENTIFYING THEIR ROLE IN NATIONAL DEVELOPMENT.

WHEREAS, it is desirable that the participation of government corporations, both collectively and individually, in the development process be clarified and rationalized, taking into consideration inter alia the significant primary role of private enterprise in the various economic sectors, and therefore the importance of maintaining conditions of effective competition;

WHEREAS, the Supreme Court has recently ruled that under the Constitution, government-owned or controlled corporations include those created by special laws as well as those through the Corporation Code;

WHEREAS, the identification of which government entities shall be considered as government-owned or controlled corporations should now be undertaken on a consistent and identical basis, so that the appropriate service-wide supervisory agencies may be so guided;

WHEREAS, there is need to assure the flexibility of such government corporations consistent with the need of public accountability by providing for differential treatment for government corporations; and

WHEREAS, it is now necessary to promulgate an integrated general statement of national policies on government-owned or controlled corporations for purposes of providing the necessary conceptual and operational guidelines on the appropriate role of the government corporate sector as a whole;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

SECTION 1. *General policy.* It is the policy of the State that the corporate form of organization, utilized judiciously, is one of the valid institutional forms through which the government may participate in economic and social development.

It is recognized, *nevertheless*, that private enterprise shall play the primary role in undertaking desirable economic activities, especially in the production and distribution of goods and services. It is therefore also the policy of the State to encourage the participation of and to avoid competition with private enterprise in economic activities. For this purpose, the areas of operation appropriate for the government corporate form shall be defined.

SEC. 2. *Definition.* A government-owned or controlled, corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital Stock;

Provided, that a corporation-organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation ;

Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and

Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation.

SEC. 3. Types of corporations. For purposes of this Decree, government-owned or controlled corporations, hereafter called government corporations, may be classified as parent or subsidiary corporations. Other corporations in which the government has equity interest may be classified as acquired asset and affiliate corporations.

- a. A parent corporations is one which is created by special law.
- b. A subsidiary corporation is one created pursuant to law where at least a majority of the outstanding capital stock or outstanding voting capital stock of which is owned by parent government corporations and/or other government-owned subsidiaries.
- c. An acquired asset corporation is one organized under the general corporation law (1) under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or (2) as a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time.
- d. An affiliate corporatival is one where total government ownership comprises less than the majority of its outstanding capital stock and its outstanding voting capital stock.

SEC. 4. Exclusions from coverage. The following corporations are not covered by this Decree: (a) acquired assets corporations and (b) affiliate corporations; *Provided*, that nothing in this Section shall be construed as an automatic exemption of this corporations from compliance with reportorial requirements, which reports however when required shall be coursed through the appropriate parents corporations; and *Provided, further*, that where so required the financial statements

of the acquired assets and appropriate affiliate corporations shall be consolidated with the financial statements of the parent corporation, together with its subsidiaries.

Chartered universities, colleges, and schools, as well as municipal corporations, which are nonetheless government corporations, are likewise not covered by this Decree.

SEC. 5. *Criteria for ushir; the corporate form.* The use of the corporate form of enterprise shall be authorized only on the basis of the following criteria:

- a. Where there exists a demonstrated need for greater flexibility in its operations, and which by the nature of the good or service to be *provided* cannot be effectively undertaken by the regular line agency form of organization; and
- b. Where financial viability or the ability of the corporation to support its operations from its own internal cash generation without operating losses at the very least, and without any special privilege or assistance from the national government can be reasonably expected.

The financial viability criterion shall not apply to those corporate operations involving direct and explicit subsidy programs as authorized by law, and where the subsidies involved are adequately funded by appropriate external sources such as the General Fund.

The test of financial viability shall, when circumstances warrant, not be applicable to civic, cultural, corporations which do not engage in activities usually associated with economic gain, and which do not compete by and large with the private sector.

SEC. 6. *Ministry representation on governing boards.* Any provision of existing law to the contrary notwithstanding, a minister or his equivalent who is by law designated as ex-officio chairman or member of the governing board of a government corporation may designate a senior official of his ministry to sit in his stead; *Provided*, that where a minister is ex-officio chairman, his representative shall be a deputy minister; *Provided, however*, that in the case of ex-officio members of the Monetary Board, the provisions of the Central Bank charter on the designation of alternates shall continue to apply.

SEC. 7. *Provision of adequate operational flexibility.* Government corporations shall be *provided* with adequate operational flexibility in order to function properly and efficiently, especially under conditions of market competition. Such flexibility shall nevertheless be consistent with the requirements of public accountability.

Operational flexibility for this purpose shall mean the ability of the corporation to act promptly on its own on individual transactions or matters, without need for further prior clearance from supervisory authority external to the corporation, *provided* such actions are within the purview of their respective charters, explicit general policies, program, and guidelines, including budgetary constraints *provided* by external supervising authorities.

SEC. 8. Differential treatment. To implement the concept of greater flexibility, government corporations in general shall be accorded differential treatment which is more consistent with corporate organizational requirements as distinguished from regular government agencies, with respect to the exercise by the various service-wide agencies, such as the Civil Service Commission, the Commission on Audit, and