

**[ REPUBLIC ACT NO. 10149, June 06, 2011 ]**

**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: