



Overview of Republic Act 10149

Raoul C. Creencia
Office of the Government Corporate Counsel





Reforms in the GOCC Sector

Republic Act 10149
GOCC Governance Act of 2011

Reforms in the GOCC Sector:

1. Laying down principles and standards for the **creation, management, administration, supervision and liquidation** of GOCCs;

Reforms in the GOCC Sector:

2. Defining the guidelines in determining the **areas or activities of government** in which the corporate form shall be utilized;

Reforms in the GOCC Sector:

3. Setting down policy measures to improve the **organizational and functional capabilities** of GOCCs.

Administrative Order 59

(15 February 1988)



GOCC –

- * Government Corporate Entity (GCE),
- * Government Instrumentality with Corporate Powers (GICP),
- * Government Financial Institutions (GFI).

GICP/GCE -

Manila International Airport Authority (MIAA),
Philippine Ports Authority (PPA),
Philippine Deposit Insurance Corporation (PDIC),
Metropolitan Waterworks and Sewerage System (MWSS),
Laguna Lake Development Authority (LLDA),
Philippine Fisheries Development Authority (PFDA),
Bases Conversion and Development Authority (BCDA),
Cebu Port Authority (CPA)
Cagayan de Oro Port Authority,
San Fernando Port Authority,
Local Water Utilities Administration (LWUA),
Asian Productivity Organization (APO).



Government Corporate Sector

The GOCC Sector:

1. There are currently 117 SOEs
2. 2010 Assets Base: Total Assets have reached over ₱4.9 Trillion or US \$113.38 Billion

SECTOR	2010 TOTAL ASSETS
Government Financial Institutions	55,465,413,422
Social Services and Housing	1,442,082,924
Land and Water Resources	5,531,355,722
Power	39,792,630,457
Support Services	94,003,678
Commercial, Trade and Tourism	1,151,889,102
Transport, Infra and Communications	9,909,122,409
TOTAL	US\$ 113,386,497,714

Government Financial Support to GOCCs:

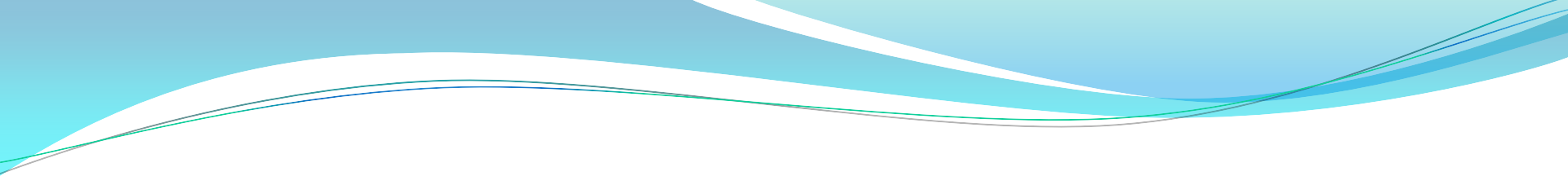
SUPPORT	2011 AMOUNT
Subsidy	1,248,953,488
Equity	67,186,047
Net Lending	419,883,721
TOTAL	US\$ 1,736,023,256

GOCC expenditures = 28%
of total government
expenditures in 2009

91% of NG's receivables or
about P433 billion

PhP85.4 billion aggregate
deficit in the past five years

PhP64.7 billion borrowed
(2nd quarter of 2011)



Governments around the world use the corporate framework to more efficiently deliver governmental services

Australia:

In Australia, the predominant term used for Commonwealth government-owned companies is "government business enterprise" (GBE). Areas covered:

air services

broadcast media

government future fund

postal services

rail track

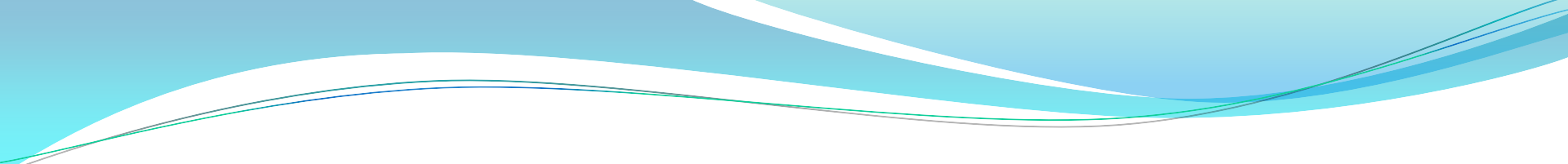
clean energy finance

Australian Government Solicitor

United States:

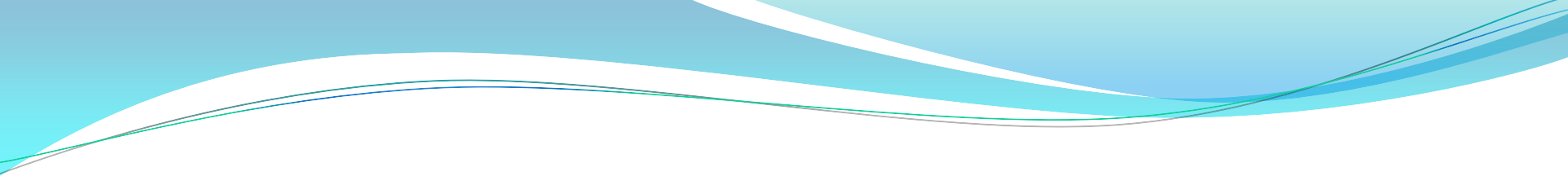
In the US, there are three major types of government corporations:

- (a) government-sponsored enterprises;
- (b) Federal Government Chartered and Owned Corporations; and
- (c) Federal Government Acquired Corporations.



The corporate form or set-up is adopted by Governments to more efficiently perform its duties and functions.

This is the rationale for creating and maintaining government corporations.



Problems besetting the
government corporate sector
led to the passage of
Republic Act 10149

Republic Act 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

Republic Act 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

Republic Act 10149

GOCCs, GICPs/GCEs, GFIs,
including their subsidiaries, but
excluding:

- (a) The Bangko Sentral ng Pilipinas;
- (b) State Universities and Colleges;
- (c) Cooperatives;
- (d) Local Water Districts;
- (e) Economic Zone Authorities; and
- (f) Research Institutions.

Republic Act 10149

Section 2. Declaration of Policy.

The State recognizes the potential of 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.

Republic Act 10149

- GOCCs as significant tools for economic development.
- State to actively exercise its ownership rights.
- ensure that GOCC operations are consistent with national development policies and programs.

Republic Act 10149

State must ensure:

1. Judicious use of corporate form

Republic Act 10149

2. GOCC operations are rationalized and centrally monitored

- resources used efficiently
- liabilities incurred prudently

Republic Act 10149

3. Transparent, professional and effective corporate governance

Republic Act 10149

4. Governing Boards are fully accountable as fiduciaries.

Republic Act 10149 – *Thrusts*:

1. Directors and Officers of GOCCs as fiduciaries of the State.
2. Standard of *Extraordinary Diligence*.
3. One (1) Year Term, with Holdover.

Republic Act 10149 – *Thrusts*:

1. Directors and Officers of GOCCs as fiduciaries of the State.
2. Standard of *Extraordinary Diligence*.
3. One (1) Year Term; with Holdover.
4. Clear accountability of the CEO/Management to the Governing Board.
5. Uniform Compensation System for all GOCCs.
6. Power to Restructure the GOCC Sector.

Republic Act 10149

Governance
Commission for
GOCCs





1927

Governor General Leonard
Wood's letter to the directors of
government corporations -
dispose / dissolve



Nationalist and pro-Filipino support

Control Board

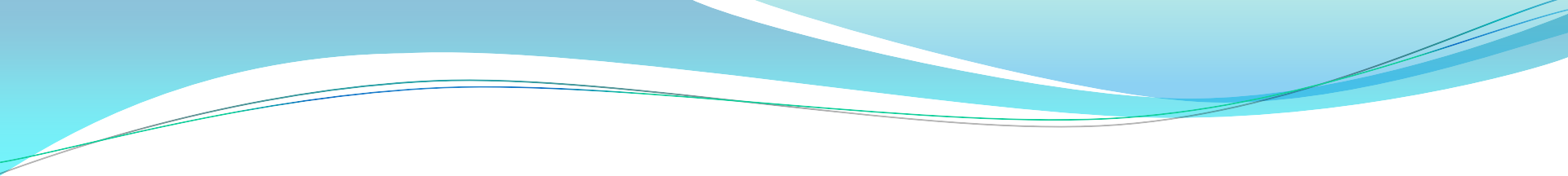
Governor-General,
President of the Senate &
Speaker of the House



1956

Government Survey and
Reorganization Commission
(GSRC)

- Republic Act 997



Even if a corporation makes losses, it “may be successful, if it is accomplishing its assigned task in the most efficient manner.”

GSRC 1956 Report, page 18.

1959

House of Representatives



11 February – House Resolution 67

“heavy drain on people’s purse”

1960 - President Garcia announced the sale of most of the existing government corporations on the ground that they have outlived their usefulness.

(Manila Times, 17 January 1960)

22 February 1960 - House Bill 4064

Committee on Government Enterprises –
abolish 16 government corporations.

Bill failed to pass in the Senate.

Early 1960s – over 20 GOCCs

1965 – 37 GOCCs

1981 - 212

1983 – 303

1988 – Reforms in the government sector

1992 - 166



2011 - 158 GOCCs

84 Chartered

74 SEC registered

2014 - 130 GOCCs



GOCCs' unregulated proliferation
is one of the contributing elements
to the fiscal imbalance of the
economy



Need for Reforms

Need for *effective* Regulation

RA 10149 - GCG



CONTROL BOARD

Governor-General,
President of the Senate &
Speaker of the House

GOVERNMENT CORPORATE MONITORING COMMITTEE (GCMC)

29 February 1984

- Executive Order

936

GOVERNMENT CORPORATE MONITORING AND COORDINATING COMMITTEE (GCMCC)

19 May 1986 – Memorandum Circular 10

22 July 1987 – Executive Order 236

1993 – Executive Order 55



GCMCC
dissolved

its functions transferred to

DOF – Corporate Affairs Group

(Administrative Order 16)

2011
Governance
Commission for
GOCCs



GCG's Legal Mandate:

- A. Rationalization of the Government Corporate Sector
- B. Compensation and Position Classification System (CPCS)
- C. Performance Evaluation Systems (Performance Scorecards)
- D. Shortlisting of Prospective Appointive Directors in GOCCs



Rationalizing the GOCC Sector

Classify GOCCs into:

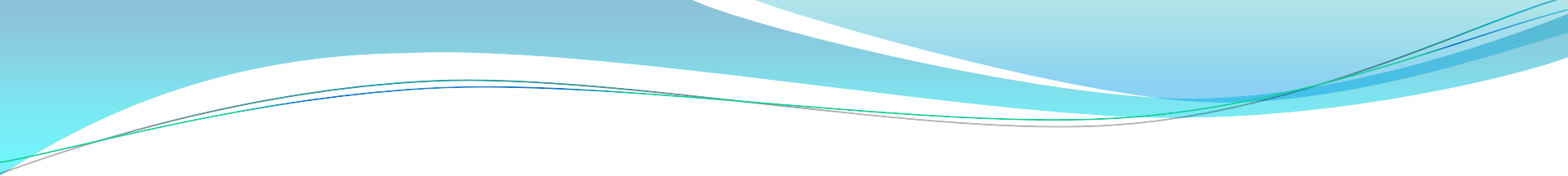
- (1) Developmental/Social;
- (2) Proprietary / Commercial;
- (3) Government Financial, Investment and Trust Institutions;
- (4) Corporations with Regulatory Functions; and
- (5) Others.

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

(ii) Recommend to the President the abolition or privatization of the GOCC, and *upon approval* of the President, implement such abolition or privatization.

The GCG has the power and function to ascertain whether a GOCC should be:

- (a) Reorganized;
- (b) Merged;
- (c) Streamlined;
- (d) Abolished; or
- (e) Privatized



Compensation and Position Classification System (CPCS)

- Shall apply to all officers and employees of GOCCs whether or not under the Salary Standardization Law.
- Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the CPCS.

- The Charters of each GOCC to the contrary notwithstanding, the compensation, *per diems*, allowances and incentives of the members of the Board of Directors/Trustees of GOCCs shall be determined by the GCG.

Achieving good governance and national development requires an enabling environment wherein the government can attract, retain and motivate a corps of competent government personnel. Accordingly, it has been the policy of the State to ensure that “compensation for government personnel [is] comparable with those in the private sector doing comparable work.”

(GCG MC 2012-13, 10 October 2012)

Executive Order 7, s. 2010

Moratorium on increases in salaries, allowances, incentives and other benefits.

Task Force on Corporate Compensation

- review the compensation and recommend reforms that would ensure a **reasonable compensation system** that is reasonable yet competitive with the private sector
- ensure that GOCCs can **still attract, retain and motivate** a corps of competent civil servants.

Executive Order 24, s. 2011

Rationalized the compensation of Appointive Directors to two forms:

a. *Per Diems* for actual attendance at meetings;

b. Performance-Based Incentives,

which may only be granted if a GOCC achieves its targets based on agreed metrics.

Executive Order 24, s. 2011

EO 24 Class	Assets	Revenues
A	≥ 100 Billion	≥ 10 Billion
B	≥ 25 Billion and < 100 Billion	≥ 2.5 Billion and < 10 Billion
C	≥ 5 Billion and < 25 Billion	≥ 500 million and < 2.5 Billion
D	≥ 1 Billion and < 5 Billion	≥ 100 million and < 500 million
E	< 1 Billion	< 100 million

Executive Order 24, s. 2011

EO 24 Class	Board Meetings (Pesos)		Committee Meetings (Pesos)		Total Maximum Per Year (Pesos)
	Max/ Meeting	Max/Year	Max/Meeting	Max/Year	
A	40,000	960,000	24,000	576,000	1,536,000
B	20,000	480,000	12,000	288,000	768,000
C	15,000	360,000	9,000	216,000	576,000
D	10,000	240,000	6,000	144,000	384,000
E	5,000	120,000	3,000	72,000	192,000



Executive Order 24, s. 2011

The Board Chairperson may receive not more than 20% of the per diem rate, which is applicable for Board meetings only.

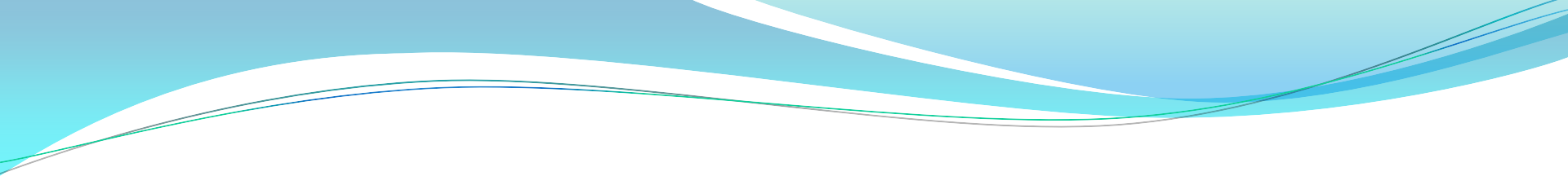
Executive Order 24, s. 2011

Appointive Directors representing a GOCC in a private corporation where the GOCC has investments may also receive compensation for their services as such, but the same is subject to the same caps that apply to the GOCC represented.

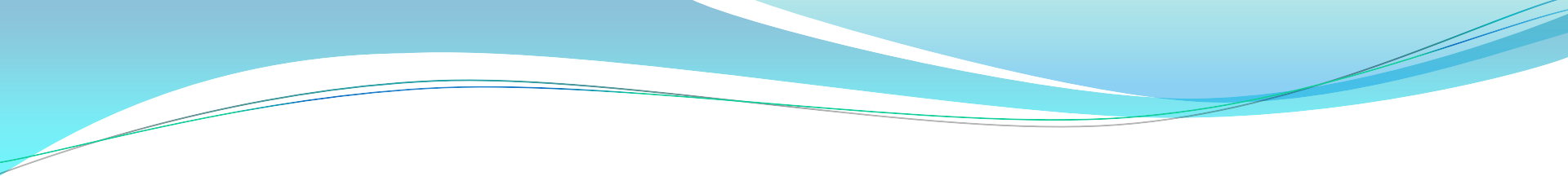


Executive Order 24, s. 2011

Any excess shall accrue and be remitted to the GOCC represented within fifteen (15) days.



Performance Evaluation System (PES)

- 
- Establish the performance evaluation systems which shall apply to all GOCCs.



- Performance Scorecards containing the following perspectives:

- (a) Social Impact

- (b) Stakeholders

- (c) Finance

- (d) Internal Process

- (e) Learning & Growth

•The GCG may recommend to the President, incentives for certain position titles in consideration of the **good performance** of the GOCC.

• Memorandum Circular 2012-11

“Interim Performance-Based Bonus (PBB) for GOCCs covered by RA 10149”

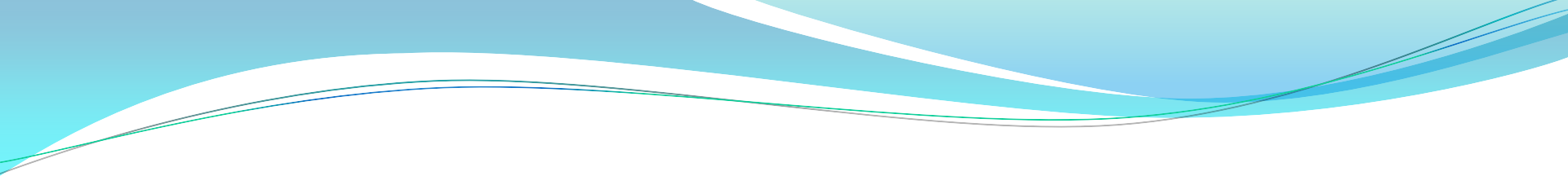


According to the World Bank (1995),
GOCCs' poor performance is
attributable to:

- 1) Lack of clarity in the government's
role as owner.



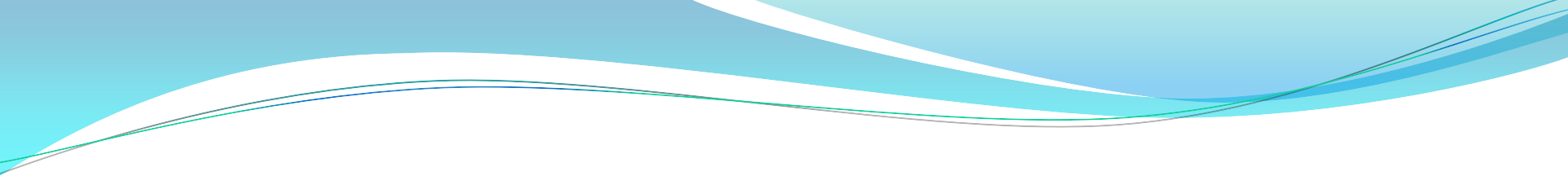
2) Multiple conflicting objectives of many state-owned enterprises



3) Easy access to subsidies, transfers, and guaranteed loans create a moral hazard problem such that there is no incentive to be efficient since there is no threat of bankruptcy.



Shortlisting of Qualified Directors



- An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.

- GCG Memo. Circ. 2012-05

“Fit and Proper Rule for Appointive Directors and CEOs of GOCCs”

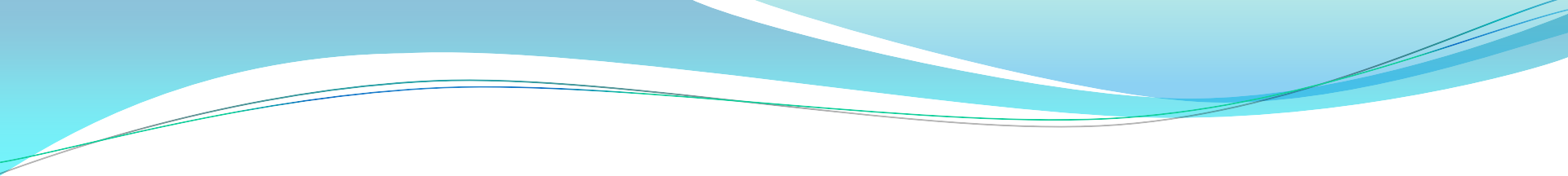
Fit and Proper Rule:

(a) Be a Filipino citizen;

(b) Be at least 30 years of age at the time of appointment to the Governing Board, except when the Charter or By-Laws requires a higher minimum age, which requirement shall prevail;

(c) Be of good moral character, of unquestionable integrity, and of known probity;

(d) Have a college degree, with at least five (5) years relevant work experience, except for a sectoral representative who only needs to be a *bona fide* member of the indicated sector or the association being represented as provided for in the Charter or By-laws;



(e) Possess management skills and competence preferably relating to the operations of the GOCC to which he/she is appointed; and

(f) Attendance in a seminar on public corporate governance.

Directors/Trustees

1. One (1) year term, unless removed sooner for cause;

2. Eligible for reappointment shall be subject to performance rating;

Appointment to a vacancy shall be only for the unexpired term of the predecessor;

Directors/Trustees

3. CEO or highest ranking officer elected annually by the Board from among its ranks, and shall be subject to the latter's disciplining authority;

Directors/Trustees

4. As fiduciaries of the State, they shall 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.

Ex-Officio Directors: Right to Designate Alternate

1. The Alternate to be designated must be an Officer of the Department or Agency to which the GOCC is attached who shall have a rank not lower than the equivalent of **Director III**;

Ex-Officio Directors: Right to Designate Alternate

2. The Alternate must not already be a member of the Governing Board of the GOCC to which he/she is being designated as an Alternate.

Fiduciaries

As fiduciaries of the State, Directors/Trustees and officers shall 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.

RA 10149, Section 19.

Fiduciaries

(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;

Cf., Section 20, *Ibid.*

Fiduciaries

(c) Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;

(d) Apply sound business principles to ensure the financial soundness of the GOCC;

Cf., Section 20, *Ibid.*

Fiduciaries

(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; and

Cf., Section 20, *Ibid.*

Fiduciaries

(f) Hold in trust any and all profits, grants and dividends received from a corporation where he sits as the GOCC's representative or nominee.

Cf., Section 20, *Ibid.*

Directors/Trustees as Fiduciaries

"*Extraordinary Diligence*" refers to the measure of care and diligence that must be exercised by the Directors and Officers in discharging their functions, in conducting the business and dealing with the properties and monies of GOCCs, which is deemed met when Directors and Officers **act using the utmost diligence of a very cautious person taking into serious consideration all the prevailing circumstances and Material Facts, giving due regard to the legitimate interests of all affected Stakeholders.**

Directors/Trustees as Fiduciaries

"Extraordinary Diligence"

Directors and Officers must act using the utmost diligence of a very cautious person taking into serious consideration all the prevailing circumstances and Material Facts, giving due regard to the legitimate interests of all affected Stakeholders.

Departmental Supervision

Sec. 8. Departmental Supervision of Attached Government Corporations. – When GOCCs are attached to a Department or other equivalent bodies, the latter shall *ipso facto* be responsible for ensuring that the policies and programs of such GOCCs, such as their budgets and operations, as well as their production, financial and other corporate targets, and disposition of profits, are consistent with sectoral policies and programs.

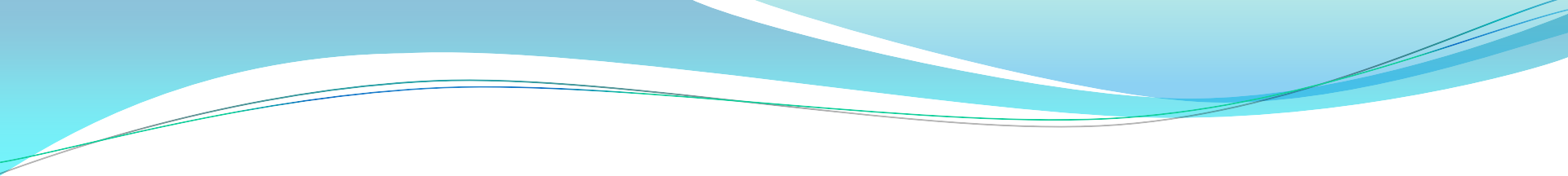
AO 59, 16 February 1988

Departmental Supervision

All Departments and government bodies with attached GOCCs shall:

(a) Enforce Departmental oversight xxx through the examination, review and concurrence of operating and capital budgets, (and) ensure compliance with performance targets xxx;

AO 59, 16 February 1988



(b) Conduct management audit of any GOCC reasonably believed to have been mismanaged xxx; and

AO 59, 16 February 1988



(c) See to it that aspects of corporate operations in which the Commission on Audit has significant audit findings or opinions are looked into.

AO 59, 16 February 1988

Coordination with Agencies

Office of the Ombudsman

- All members of the Board, CEO, and officers of GOCCs shall be qualified by the Fit & Proper Rule
- Persons with derogatory records as certified by the Ombudsman shall be temporarily disqualified from appointment in a GOCC.

(GCG Memorandum Circular 2012-05)

Coordination with Agencies

Commission on Audit (COA)

- Restitution by a member of the Board or Officer of a GOCC shall be made upon determination and report of the COA.
- The Chairman of the GCG may direct at any time a special COA audit of any GOCC.

(GCG Memorandum Circular 2012-10)

Coordination with Agencies

Commission on Audit (COA)

- Permanent disqualification from appointment in a GOCC by virtue of a final and executory Notice of Disallowance.

(GCG Memorandum Circular 2012-10)

Coordination with Agencies

Civil Service Commission (CSC)

- The CPCS shall consist of classes of positions grouped into such categories as the GCG may determine.
- Involves the allocation of proper position titles and salary grades.

Coordination with Agencies

Securities and Exchange Commission (SEC)

- The SEC shall not register the articles of incorporation and by-laws 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.

Coordination with Agencies

- Department of Budget and Management
- Commission on Audit
- Civil Service Commission
- National Economic and Development Authority
- Office of the Government Corporate Counsel



Section 1 of PD 1415

The Office of the Government Corporate Counsel shall be the principal law office of all government-owned or controlled corporations, **without exception**, including their subsidiaries.

Administrative Code, Book IV, Title III, Chapter 3:

“Section 10. Office of the Government Corporate Counsel.

– The Office of the Government Corporate Counsel (OGCC) shall act as the **principal law office** of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall **exercise control and supervision over all legal departments or divisions** maintained separately and such powers and functions as are now or may hereafter be provided by law. x x x”

Administrative Order 130 (1994).

Section 1. All legal matters pertaining to x x x GOCCs shall be exclusively referred to and handled by the OGCC, unless their respective charters expressly name the x x x OSG as their legal counsel. When authorized by the President, or by the head of the office concerned and approved by the President, the OSG shall also represent GOCCs.

Memorandum Circular 9, 27 August 1998.

Section 3. GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But in **exceptional cases**, the **written conformity and acquiescence** of the **Government Corporate Counsel**, x x x, and the **written concurrence of the Commission on Audit** shall first be secured before the hiring or employment of a private lawyer or law firm.



Small corporate counsel division under the Department of Justice

December 1, 1935

Former Senator
& SC Justice Ramon Diokno





* 1950 – **Executive Order 392** – OGCC

* 1959 - **Republic Act 2327**

“Charter of OGCC” signed into law

* 1963 - **Republic Act 3838** –

statutory legal counsel of all GOCCs, placing GOCC legal departments under its control and supervision.



- * 1987 – **Administrative Code** – reinforced OGCC’s unique role as statutory legal counsel of GOCCs

- * Today – **New OGCC Charter** in Congress *strengthen its role and better serve its clients*



Statutory counsel of government corporations (GCs)

- * *Handle litigation / arbitration cases*
- * *Render legal opinion*
- * *Draft / Review contracts*



Special duties:

- * *Arbitrate disputes among GCs*
- * *Hear administrative cases*
- * *Act as corporate officers*
- * *Ex-officio member of the Board of Directors*



ABC Formula

Able Lawyers

Better Service

Clearer Rules



THANK YOU!

Enjoy your time in public service. It may well be one of the most interesting and challenging times of your life.

- Donald Rumsfeld