

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 59

RATIONALIZING THE GOVERNMENT CORPORATE SECTOR

WHEREAS, there is need to improve the efficiency of government-owned and controlled corporations and their subsidiaries in order to promote economy, efficiency and effectiveness in the delivery of public services;

WHEREAS, in the past there was an excessive proliferation of government-owned and controlled corporations without clear delineation of the grounds for government activities in corporate form and without adequate supervision and control; and

WHEREAS, there was a discouragement of private initiative on account of undue government competition, and because of the lack of oversight mechanisms, the financial performance and productivity of government corporations, in the aggregate, were below desirable levels.

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

ARTICLE I. GENERAL PRINCIPLES AND GUIDELINES

SECTION 1. Policy Orientation. Pursuant to the policy under existing laws to rationalize the government corporate sector, this Administrative Order shall (1) provide the principles and standards to be followed in the creation, management, administration, supervision and liquidation of government-owned and controlled corporations, (2) define the guidelines in determining the areas or activities of government in which the corporate form shall be utilized, and (3) set down policy measures to improve the organizational and functional capabilities of government corporations.

SECTION 2. Definition of Terms. As used in this Administrative Order, the following terms shall mean:

- (a) Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the Government, directly or indirectly, has ownership of the majority of the

capital or has voting control; Provided, That an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation.

- (b) Acquired asset corporation is a corporation (1) which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired by the government through final judgment in a sequestration proceeding; or (2) which is a subsidiary 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 law or by enunciated policy is required to be disposed of to private ownership within a specified period of time.

SECTION 3. Guidelines for Government Participation/Intervention. The Government may participate, intervene in areas or activities primarily reserved for the private sector on the basis of the following guidelines:

- (a) The Government recognizes the primary role of the private sector in undertaking desirable economic activities. Accordingly, it shall avoid engaging in activities that are in competition with the private sector.
- (b) The Government may participate/intervene (i) when the goods and service to be provided are vital to society and the private sector is unwilling or unable to provide the same or expand its capacity to meet market demand, or (ii) when intervention in free market operations is justified by the need to create a bias in favor of disadvantaged sectors of society.
- (c) Whenever Government participation/intervention is justified, the corporate form shall be utilized only when any of the following conditions exist: (a) when the nature of the goods or services to be produced or the market environment under which the activities are to be carried out dictates a need for operations to be undertaken under procedures less restrictive than those prescribed standard government regulations applicable to bureaus and other regular

line agencies of Government; (b) when it is the intent to limit the liability of Government to its direct equity exposure in the activity or operation; or (c) when the GOCC so established is reasonably expected to be financially self-sustaining.

SECTION 4. 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.

SECTION 5. Differential Treatment. To implement the concept of adequate operational flexibility, GOCCs shall, subject to existing laws, be accorded differential treatment by the various service-wide agencies, such as the Department of Budget and Management (DBM) and the National Economic and Development Authority (NEDA), in the exercise of their respective powers and functions. Such agencies shall distinguish corporate organizational and procurement practices from those of bureaus and regular line agencies of government.

In the formulation of differential treatment, GOCCs may be classified into functional or sectoral groupings. For this purpose, the Government Corporate Monitoring and Coordinating Committee (GCMCC) as reconstituted under Executive Order No. 236 dated July 22, 1987 shall, in consultation with the various service-wide agencies, coordinate the classification of GOCCs according to functional and sectoral groupings.

The DBM shall, to the extent possible, observe the applicable industry standards in the promulgation of budget circulars and regulations. Towards this end, the DBM shall endeavor to streamline its operations with respect to GOCCs.

The NEDA shall likewise formulate policies providing for differential treatment for infrastructure contracts and major procurement of equipment and the like by GOCCs, such policies to be made in the context of comparable appropriate industry practices and standards.

Nothing in this Section shall be construed as in any way diminishing or limiting the responsibilities and accountabilities of GOCCs and their respective officers.

SECTION 6. Non-Preferential Treatment. The Government shall observe the following policy measures and limitations, with respect to government corporations:

- (a) The Government shall see to it that government corporations observe judicious restraint in the exercise of their quasi-judicial, adjudicatory authority or regulatory functions, especially in areas where they compete with the private sector, to allow the latter to operate under a regime of less restrictions and to encourage fair competition; except when the performance of regulatory functions is absolutely necessary in the pursuit of the national interest and security.
- (b) To avoid undue or unfair competition, government corporations operating in a particular sector or industry shall be subjected to rules and regulations applicable to their private sector counterparts.
- (c) Government agencies and entities which have the discretion to grant competitive advantages and benefits to GOCCs, shall, as a general rule, avoid the granting of such advantages and benefits especially to GOCCs which directly or indirectly compete with private sector. The advantages and benefits mentioned hereof include Government guarantees for debts incurred and special privileges such as partial or full exemption from the payment of taxes, duties, imposts, and other charges. This rule shall not apply when the government corporation concerned is organized solely for cultural, educational, civic or scientific purposes.

The above limitations shall, however, be without prejudice to the Government providing financial assistance to government corporations in the form of equity contributions, or loans and advances which when extended shall preferably be under terms not more favorable than those obtaining in the market; Provided, that the Government may grant subsidies to GOCCs if any of the following conditions exists: (a) when the subsidy is justified by the need to create a bias in favor of disadvantaged sectors of society; or (b) when a fortuitous event, although temporary in nature, will affect the operational viability of a GOCC.

In like manner, government corporations shall not be subject to undue constraints or limitations not imposed on their private counterparts in their respective areas of operation.

ARTICLE II. GUIDELINES FOR DEPARTMENTAL SUPERVISION

SECTION 7. Continuance of the Attachment Relationship Between Corporations and Departments or Their Equivalent Bodies. The operational relationship between GOCCs and Departments or bodies to which they are attached and which are responsible for overseeing them shall be observed in accordance with the provisions of existing laws.

SECTION 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.

All Departments and government bodies with attached GOCCs, shall:

- (a) Enforce Departmental oversight of GOCCs, particularly over those incurring losses or are unable to service their obligations, through the examination, review and concurrence of their operating and capital budgets, as well as to ensure compliance with performance targets as agreed upon with the GCMCC.
- (b) Conduct management audit of any GOCC reasonably believed to have been mismanaged upon prima facie showing of such mismanagement and take such action as may be appropriate under the circumstances; and
- (c) See to it that aspects of corporate operations in which the Commission on Audit has significant audit findings or opinions are looked into.

SECTION 9. Role of the Department in Corporate Decision-Making. The greatest possible degree of autonomy in decision-making at the operational level shall be accorded attached GOCCs. In implementing the attachment relationship, the role of the Department in corporate decision-making shall be limited to: (a) ensuring that proposed corporate plans and programs are congruent with its own sectoral objectives and priorities; (b) determining the implications of such proposed plans and programs on those of other GOCCs attached to the Department; (c) reviewing the assumptions given and calculations made in justifying the viability of such pro-

posed plans and programs and passing upon the targets proposed to be achieved; (d) monitoring the operating results and financial performance of the attached corporation on a periodic basis to ensure that agreed targets are being faithfully pursued, without prejudice to GCMCC's monitoring, performance evaluation and other related functions.

SECTION 10. Departmental Representation in Corporate Governing Boards. Unless otherwise provided by law, a Department to which a GOCC is attached shall have a representative in the Board of Directors of the attached GOCC to provide a two-way flow of timely, relevant and accurate information between the Department and the attached GOCC on all matters necessary for effectively coordinating the plans and programs of the GOCC with the policies and objectives of the Department.

SECTION 11. Authority/Powers of Department Secretary over Attached GOCCs. To the extent consistent with existing laws, the Secretary to whose Department a GOCC is attached shall have the following responsibilities:

- (1) Recommend to the President the appointment of the members of the board, including the chairman;
- (2) Recommend to the President the appointment of the full-time chief executive officer of the GOCC who may come from among the members of the board;
- (3) Recommend to the President the removal and the suspension of any member of the board of directors or Chief Executive Officer;
- (4) Set overall objectives of the GOCC by the issuance of general guidelines to the board of directors;
- (5) Require reports and data from the board of directors or the chief executive officer regarding the GOCC's performance;
- (6) Approve the annual report, budget proposals, and modifications of the articles of incorporation or by-laws; and
- (7) Exercise such rights as are normally enjoyed by stockholders or members of a GOCC, except that visitorial power is limited to financial transactions of the GOCC.

The Secretary shall not, however, intervene in any particular action taken by the board of directors, the chief executive officer, or other subordinate personnel of the GOCC.

SECTION 12. Monitoring of Performance. The Department shall monitor periodically, as part of its routine supervisory function, the operating results and financial performance of the corporation for the purpose of insuring that both objectives and execution of the corporate plans and programs are being effectively pursued and implemented. For this purpose, the Department shall, among others, require the GOCC to render periodic reports on the progress of plans and programs, including the audit of the annual financial statements of the GOCC as well as other types of audit examination in appropriate cases as hereafter provided. The periodic monitoring and performance results and the recommendations and actions taken thereon, shall be submitted to the GCMCC as inputs for the latter's discharge of its inter-departmental coordinative and performance evaluation function of the GOCC operations. Such monitoring by the Department shall be without prejudice to the GCMCC requiring data and information at such periodic intervals as it may deem necessary for its own special purposes.

ARTICLE III. INTER-DEPARTMENTAL COORDINATION,
MONITORING AND EVALUATION OF
GOVERNMENT CORPORATE OPERATIONS

SECTION 13. Central Inter-Departmental Body. The GCMCC as reconstituted under Executive Order No. 236 shall serve as the central inter-departmental body for all GOCCs which the President deems should be monitored.

SECTION 14. Performance Criteria and Evaluation. Pursuant to Executive Order No. 236 and its implementing guidelines, operationally meaningful financial and economic performance criteria shall be formulated in order that corporate management may be fully aware of the standards and targets by which their operations will be assessed.

Such performance criteria shall include both those which are applicable to GOCCs in general and those which are specific to each GOCC or group of similar GOCCs and shall be translated into appropriate quantitative multi-year performance targets which shall be agreed upon by the GCMCC, the concerned GOCC and the Department to which the GOCC is attached.

SECTION 15. Role of Service-Wide Agencies. All service-wide agencies dealing with and affecting the operations of GOCCs shall continue to exercise their respective present functions, but shall however observe the policies and guidelines herein provided to the extent that they are not inconsistent with their duties and responsibilities as provided for in specific laws.

ARTICLE IV. PROPOSALS, RECOMMENDATIONS AND STUDIES ON THE GOVERNMENT CORPORATE SECTOR

SECTION 16. Role of the GCMCC in the Review of Studies and Proposals Pertaining to the Government Corporate Sector. The GCMCC shall review and evaluate all proposals, recommendations and studies pertaining to the government corporate sector before they are submitted to the President. The GCMCC, in coordination with other concerned agencies, shall take cognizance of such matters related to the general powers of the corporation, the composition, powers and functions of the board, the powers and functions of the chairman of the board and the chief executive officer, including their relationship, the basic organizational structure, borrowing powers and limitations, standard accounting systems and other related matters. Such proposals and recommendations, whenever feasible, shall be accomplished through the issuance of pertinent executive orders, rules, regulations and procedures by the concerned government agency, or whenever applicable, by the GOCCs themselves.

To the extent practicable, the GCMCC, other government agencies, and GOCCs shall be guided by the following principles in implementing the provisions of this Section:

- (1) **Governing Boards.** A GOCC shall be governed by a Board of Directors or equivalent body composed of an appropriate number of members to be appointed by the President of the Philippines upon the recommendation of the Secretary to whose Department the GOCC is attached. The Chairman of the board shall likewise be appointed by the President upon the recommendation of the Secretary.
- (2) **Powers and Functions of the Board.** Insofar as it is not inconsistent with the charter of a given GOCC, the Board of Directors or equivalent body shall have the following powers and functions:
 - (a) Formulate policies necessary for the attainment of the purposes and objectives for which the

corporation has been organized and assure consistency with the overall objectives established by the Secretary for the GOCC as well as compliance with guidelines issued by the GCMCC:

- (b) Adopt by-laws consistent with existing laws and amend, repeal or alter such by-laws, subject to the approval of the Secretary;
- (c) Promulgate rules and regulations governing the manner in which the general business of the GOCC is to be exercised;
- (d) Pass upon and approve the appointment of the principal officers of the GOCC as nominated by the Chief Executive;
- (e) Determine the organizational structure of the corporation and create such positions as may be necessary for the economical, effective and efficient discharge of its functions and responsibilities;
- (f) Pass upon and approve, subject to the final action of the Secretary and the GCMCC, where appropriate, the annual and supplemental budgets, including corporate plans and annual and medium-term investments, submitted to it by the Chief Executive;
- (g) Pass upon and approve all borrowings of the GOCC;
- (h) Pass upon and approve management contracts, major procurement contracts as well as agreements to dispose of significant assets, and disposition of profits;
- (i) Render annual reports, including reports on subsidiaries, and such special reports as may be required by the President of the Philippines, the legislature, and other government supervising agencies;
- (j) Adopt rules and procedures and fix the time and place for holding meetings; and
- (k) Exercise such other powers and perform such other functions as may be required by law.

- (3) Board Meetings and Compensation. The Board of Directors or equivalent body shall convene as frequently as is necessary to discharge its responsibilities properly, but shall meet at least once a month. The members of the board or their respective alternates shall receive such per diems, allowances and other emoluments as the board may determine in accordance with the standards and guidelines formulated by the GCMCC.

- (4) Chief Executive and Other Officers of the GOCC. A GOCC shall have a President, General Manager, or Managing Director as the case may be, as its Chief Executive Officer who shall be appointed by the President of the Philippines upon recommendation of the Secretary from among the board members. He shall serve on a full-time basis for a fixed term or as provided in the charter unless sooner removed for cause or by reason of incapacity. The Chief Executive Officer shall be of good moral character, of unquestionable integrity and responsibility, and shall be of recognized competence in the area of activity of the corporation.

No person can be a chief executive officer of more than one GOCC, except in the case of subsidiary of a GOCC of which he is already the chief executive officer.

The Chief Executive Officer shall be assisted by such other officers as may be necessary for the efficient operations of the corporation.

The salary and emoluments of the Chief Executive Officer of the GOCC shall be fixed by the board or equivalent body, subject to the standards and guidelines of the GCMCC. The salary and emoluments of the other principal officers of the corporation shall be determined by the Chief Executive Officer, subject to the board's approval and in accordance with the standards and guidelines of the GCMCC.

- (5) Powers and Functions of the Chief Executive Officer. The Chief Executive Officer shall have the following powers and functions:

- (a) Execute, administer and implement the policies and measures approved by the board;
- (b) Direct and manage the affairs and business of the GOCC;

- (c) Submit within a specified number of days after the close of the calendar year an annual report to the board and such other reports as may be required;
- (d) Submit to the board, in line with the national budget cycle, an annual budget and such supplemental budgets as may be necessary for its consideration and approval;
- (e) Represent the GOCC in all dealings with other offices, agencies and instrumentalities of the Government and with all persons and entities, both public or private, domestic or foreign;
- (f) Appoint, with the approval of the board, and discipline for cause in accordance with civil service laws, rules and regulations, the subordinate officers and personnel of the corporation;
- (g) Transfer officers and personnel as the exigencies of the service may require without need of prior approval by the board and in accordance with existing rules and regulations;
- (h) Delegate authority, in whole or in part, to subordinate officers and personnel of the GOCC; provided that the authority to delegate has had the prior approval of the board; and
- (i) Perform such other duties as may be assigned to him by the board.
- (6) Loans. A GOCC, when authorized under its charter to contract loans from domestic or foreign institutions or to issue bonds to carry out the purpose for which it was organized, may incur such indebtedness only after its board of directors or any equivalent body has deemed it necessary. Such board or equivalent body shall, by resolution, declare and state the purpose of the proposed debt and the terms and conditions under which it shall be incurred; Provided, That the GOCC's level of indebtedness shall be subject to the guidelines issued by the Department of Finance.
- (7) Reports. A GOCC shall, within five (5) months after the end of every calendar year, submit its annual report to the President through the Secretary of the Department to which it is attached. It shall likewise submit such periodic and other reports as may be required

of it from time to time especially with respect to progress made with regard to parent GOCC's supervision over subsidiaries as spelled out in the following Section.

(8)

Supervisory Authority of Parent Corporations Over Subsidiaries. A parent GOCC shall be responsible for the activities and performance of its subsidiaries. It may, as appropriate, exercise supervisory and coordinative authority over the latter through the following means, among others:

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- (a) Membership representation in the governing boards of the subsidiaries and, in appropriate cases, determination of the composition of such membership, subject to the approval of the Secretary to whose Department the GOCC is attached;
 - (b) Retention of financial control over the subsidiaries by reserving the right to appoint the financial officers of such subsidiaries;
 - (c) Assignment of its principal officials (such as assistant general managers) as liaison officers to the subsidiaries who shall be responsible for monitoring on a periodic basis the highlights and progress of activities of the subsidiaries for the purpose of having an overview of financial operations but not control over their day-to-day operations;
 - (d) Requirement of periodic reports on the progress of activities and financial operations of subsidiaries;
 - (e) Holding of regular meetings with the officers of the subsidiary corporations to discuss the progress of operations, particularly relative to the status of the achievement of targets; and
 - (f) Holding of an annual planning conference to have a year-end assessment of performance and to present plans for the coming year.
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ARTICLE V. CREATION, ACQUISITION AND DISSOLUTION
OF GOVERNMENT CORPORATIONS

SECTION 17. Role of the GCMCC in Evaluating Proposals to Create, Acquire and Dissolve Government Corporations. Restraint shall be exercised in the creation or acquisition of corporations by the Government. Accordingly, all proposals for the acquisition, creation and dissolution of government corporations initiated and endorsed by any executive agency, office or instrumentality of the Government shall, in each case, be subject to the review and evaluation of the GCMCC in accordance with appropriate criteria established under this Administrative Order before they are submitted to the President. The GCMCC shall advise the President regarding proposed government corporations to be created by the legislature. All proposals to acquire a government corporation, including proposals to establish subsidiary corporations, shall be submitted to the President for decision/approval.

pl The conversion into equity of loans previously extended by a GOCC to a privately owned corporation organized under the Corporation Code, which conversion will result in majority ownership or control by said GOCC in said debtor corporation, shall require the prior approval of the President upon recommendation of the GCMCC.

In reviewing and evaluating a proposal to dissolve a government corporation, the following shall be considered by the GCMCC:

- (a) The corporate life of the GOCC as specified under its Charter;
- (b) The fulfillment of the objectives for which the GOCC was created;
- (c) The financial, economic and social viability of the GOCC; and
- (d) The GOCC's role in developing the sector in which it operates.

SECTION 18. Dissolution of Acquired Asset Corporations. All executive agencies, offices, and instrumentalities shall take steps to dissolve any acquired asset corporation which has not been disposed of to the private sector within five (5) years from the date of the decision to dissolve the corporation. The chief executive officer of such corporation shall, within sixty (60) days from the lapse of the five-year period, submit to the propose authorities the legal

instruments necessary for its dissolution in accordance with law, unless a specific exemption or extension is granted by the President.

The chief executive officer who, by fault or negligence, fails to submit such instruments as herein prescribed may be subject to applicable sanctions, under appropriate laws, together with such persons who participate in the same fault or negligence.

ARTICLE VI. EFFECTIVITY

SECTION 19. This Administrative Order shall take effect immediately upon approval.

Done in the City of Manila, this 16th day of February, in the year of Our Lord, nineteen hundred and eighty-eight.

Corason B. Aquino

By the President:

Catalino Macaraig, Jr.
CATALINO MACARAIG, JR.
Executive Secretary