

RECENT ENDEAVORS OF THE PHILIPPINES ON DRAFTING A NEW SOE ACT

A Presentation by Senator Franklin M. Drilon, former Senate President of the Republic of the Philippines and present Chairman of the Philippine Senate Finance Committee; Principal Sponsor of Philippine Senate Bill No. 2640 or the proposed Philippine GOCC Governance Act of 2011

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We thank you for this opportunity to present and discuss the Philippine Government-Owned and Controlled Corporation (GOCC) Governance Act of 2011. By an act of our Congress, it is a measure that will institutionalize reforms in our country's public corporate sector.

HISTORY OF GOCCS

In the Philippines, the use of the corporate vehicle has been recognized as an efficient way to manage government assets. Thus, there was a surge in the growth of State-Owned Enterprises (SOEs), called Government-Owned

and Controlled Corporation (GOCC) in our country, during the post-war years as our government actively rehabilitated the economy. However, divestment efforts quickly followed during the mid-50s and early 60s due to the dismal financial performance of these GOCCs. In 1965, when President Ferdinand Marcos assumed power, there were only 37 GOCCs. In his first ten (10) years in office, however, government corporations grew rapidly to reach 120 in 1975. It continued to grow in the next decade, numbering 303 in 1984.

However, by 1984, the Philippine government could no longer ignore the reality that the government corporate sector consumed a large amount of public resources and burdened the public sector with substantial domestic and external borrowings.

Yet, there was no central agency tasked to monitor and supervise the activities of the government corporate sector. This led President Marcos to issue **Executive Order No.**

936 which created the Government Corporate Monitoring Committee (GCMC).

When President Corazon Aquino assumed power in 1986, she rationalized the government corporate sector through **Presidential Proclamation No. 50**, which authorized the privatization of GOCCs. As a result, only 157 GOCCs, or SOEs operate in our country today. However, the public corporate sector remained infused with decay that ranges from staggering, almost crass, allowances, to culpable mismanagement of GOCC affairs and assets by its executives and directors.

THE PHILIPPINE GOCC GOVERNANCE ACT OF 2011

The urgency to reform the government corporate sector to make it an effective vehicle in achieving social and economic progress becomes more apparent once we take into account the role that GOCCs play in the Philippine economy.

In 2009, total expenditures of GOCCs are equivalent to 28% of the total expenditures of the national government. GOCC assets, at **125 Billion US Dollars** in 2009, also exceed national government assets at **65 Billion US Dollars**. The 2009 Annual Financial Report of the Philippine Commission on Audit (COA) also indicates that out of the **Ten Billion Five Hundred Million US Dollars** Inter-Agency Receivables of the National Government, 91% are due from GOCCs.

When he assumed office in July 2010, President Benigno S. Aquino pledged to reform the public corporate sector. This paved the way for the Philippine GOCC Governance Act of 2011.

Previous attempts to monitor and coordinate the activities and functions of the GOCCs were done through executive issuances which tend to change along with changes in government. This is the first time that we have

legislated policies to institute long-term reforms in the public corporate sector.

DEFINING THE ROLE OF THE STATE AS AN OWNER

Presently, the role of Government as an Owner of the GOCCs is not explicitly defined in our statutes or regulations. Thus, the challenge is to clarify and put in place management principles consistent with the role of the National Government as the owner of the GOCCs such as (a) the power to enter into and sever, within a period not longer than one (1) year, agency relationships with the directors and executive officers of GOCCs; (b) an unequivocal policy that such directors and officers are trustees of the State, with no appropriating power over GOCC assets; (c) unrestricted access to GOCC books of accounts and the right to exact strict compliance with accounting and financial disclosure standards; (d) the power to privatize, abolish or otherwise restructure GOCCs

without need for legislative action and; (e) the power to set standards of performance, compensation and other matters incidental to the conduct of GOCC affairs.

CREATING AN EFFECTIVE OVERSIGHT

MECHANISM

Lack of an Effective Central Monitoring Agency.

For nearly three (3) decades, the monitoring agencies assigned to GOCCs were manned by heads of departments who would discharge their functions as *ex-officio* officers. To these officials, monitoring GOCCs was a secondary task, appended only to their official functions. The lack of seriousness in supervision allowed GOCCs to virtually operate as “independent republics”.

To address this, the Philippine GOCC Governance Act creates a full-time, central, advisory, monitoring, and oversight body authorized to formulate, implement and coordinate policies called the GOCC Commission on Governance (GCG), which shall be presided by a Chairman

with the rank of Cabinet Secretary. It is also tasked to promulgate an ownership and operations manual and government corporate standards for GOCCs, which shall be no less rigorous than those, required by the Philippine Central Bank for our banks and, the Securities and Exchange Commission, for other private corporations.

Further, to more effectively monitor GOCC affairs, the GCG shall establish an objective performance evaluation system and conduct periodic assessment of their performance.

Weak Disclosure and Audit Mechanisms. To strengthen the audit mechanisms as applied to GOCCs, our reform law mandates that, when necessary, the GCG Chairman may direct at any time, a special audit of any of the GOCCs for any specific purpose.

Further, to exact greater transparency, all GOCCs shall be required to maintain a publicly-accessible website which contains their latest financial statements, corporate

operating budgets and summary of borrowings and such other information that the GCG may require.

THE NEED FOR IMPROVED CORPORATE GOVERNANCE

Rationalization of GOCC Portfolio. Fifty-seven (57) of our GOCCs were created by special acts of Congress. A cursory review of these GOCCs shows that their functions can be merged or restructured. In some instances, the abolition of the GOCCs is even justified. However, under our Constitution, only the Philippine Congress can perform these tasks. The reality is that it is almost impossible to institute reforms through Congress as the legislature is a political body, easily swayed by popular opinions.

What we provided in the law is to delegate this legislative function to the GCG. But the exercise of such delegated power is subject to clear and reasonable standards enumerated in the law. Under our GOCC Governance Act, the GCG is authorized to evaluate the performance of a

GOCC and ascertain, on the basis of the standards set forth in the law, whether it should be reorganized, merged, streamlined, abolished or privatized.

Conflicting Functions of GOCCs. As a matter of good governance, a GOCC should not exercise regulatory functions and at the same time engage in the activity which it regulates. In the case of the Philippine Amusement and Gaming Corporation (PAGCOR), however, it operates casinos, and at the same time issues licenses to operate casinos.

The GCG is thus authorized to sort through these conflicting mandates. Upon determination that there exists such conflict, this Commission shall recommend to the President, any of the following: (1) the privatization of the GOCCs' commercial operations, or (2) the transfer of the regulatory functions to the appropriate government agency, or (3) such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions.

Arbitrary Terms of Office. The present set of GOCC charters provide varying terms of office without rhyme or reason. Some terms last for two (2) years while others last for as long as five (5) years. Consequently, it was difficult to exact good performance and accountability from these directors because of the comfort of a somewhat lengthy term of office.

Under our GOCC Governance Act, we adopt best corporate practices in the private sector by introducing a uniform term of one (1) year for the appointive members of the Board of Directors of all GOCCs. With the enactment of this policy, members of GOCC Boards are expected to exert their utmost effort in the performance of their duties since their reappointment will be reviewed on a yearly basis and will depend on above average performance, as measured against predetermined criteria to be set by the GCG.

Selection Process for GOCC Board of Directors.

To address the politicized manner of selecting members of

GOCC Boards, the law mandates the President to select from a shortlist of candidates prepared by the GCG. To be in the shortlist, one has to satisfy the Fit and Proper test, which mirrors best practices in the private sector. To be reappointed for another term, a director has to score satisfactorily in the Performance Scorecards provided by an objective Performance Evaluation System, to be set by the GCG.

GOCC board seats will thenceforth cease to be a prize for political patronage and loyalty.

Excessive and Unwarranted Compensation. In the course of our inquiry, we unearthed abuses in the directors' power to set compensation. In one case, the GOCC directors awarded themselves thirty-six (36) months of pay for attending monthly meetings. In another case, the Board of Trustees in a pension fund paid themselves at least ten thousand US dollars (\$10,000) per board meeting.

Regrettably, the situation was caused by legislation which exempted a number of GOCCs from the Philippine

Salary Standardization Law (SSL) and vested in their respective boards the power to set their own compensation. To correct this wrong, our reform law empowers the GCG to set compensation, *per diems*, allowances and incentives of the members of the board of directors or trustees.

If the GOCC is organized solely for the promotion of social welfare without regard to profit, the total compensation which the members of the Board of such GOCC may receive shall be based on the GOCC's achievement of its performance targets.

The director or officer of the GOCC who receives any compensation or benefit in excess of that authorized by the GCG shall return the excess to the GOCC.

Fiduciary Duty. When pressed by the Senate as to why a GOCC executive appropriated for himself hundreds of millions of pesos in stock options from an investee company, said official candidly said that he was legally entitled to such compensation. Such forthright response

disclosed a shortcoming in understanding the fiduciary duty of a director of a GOCC.

Under the new law, we provided a clear definition of the fiduciary duty of the executives and the members of the Board of Directors of GOCCs. Henceforth, members of the Board and the officers must exercise extraordinary diligence in managing GOCC affairs.

As trustees of the State, members of the Board of Directors 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.

Where a member of the Board or an Officer, by virtue of his office, acquires or receives for himself 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 without prejudice to any administrative, civil or criminal action against members of the Board of Directors/Trustees or Officers.

CONCLUSION

Highlighting its importance to the President's reform agenda, the landmark GOCC Governance bill was certified urgent by the Chief Executive. Indeed, the GOCC Governance Act is the first major legislation under the new Aquino administration. Modesty aside, many quarters did not believe that we could pass such major reform legislation after just ten (10) weeks of legislative debates.

Let me share with you a few pointers on how we accomplished this. First, we created a favourable environment for the passage of this law by exposing the abuses and anomalies in the GOCCs. Second, we acquired mastery of the subject by reading all materials within our reach so that we were able to articulately respond to

questions during parliamentary debates, thereby convincing our colleagues of the urgency of and necessity for the law. Third, we ensured that the bill was included in the President's Agenda as a priority reform measure and had it certified as an urgent government bill. Fourth, we sought the personal support of key leaders of Congress and the private sector. Finally, we consulted other stakeholders (such as unions of GOCC employees) who may have apprehensions on job and compensation issues for the ordinary employees.

The proposed Philippine GOCC Governance Act of 2011 intends to rationalize the structure, existence and operations of the GOCCs. It is designed to reform the government corporate sector, improve corporate governance of GOCCs, and exact from them efficient and effective public service.

Indeed, the Philippine GOCC Act of 2011 establishes the framework for reforms in the public corporate sector.

The days when the Philippine GOCC boards can act independently of the Philippine national government will be finally over. We are confident that with this measure, the inefficiencies, mismanagement, excesses and abuses we saw in the operation of the GOCCs will all be a thing of the past. What we hope to see are GOCCs operating profitably and contributing significantly to the welfare of our people, with the end in view of improving the quality of public services and substantially contributing to our country's development.