
THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES

FIT AND PROPER RULE

WHEREAS, Republic Act No. 10149, otherwise known as the “GOCC Governance Act of 2011” (R.A. 10149), declares it a policy for the State, as an active owner of GOCCs, to ensure that “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 act in the best interest of the State”, and thereby mandates that “All members of the Board, the CEO and other officers of the GOCCs, including appointive directors in subsidiaries and affiliate corporations, shall be qualified by the Fit and Proper Rule,” which it defines as “the standards 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 of integrity, experience, education, training and competence;

WHEREAS, under Section 15 of R.A 10149, all Appointive Directors of the GOCCs shall be appointed by the President of the Philippines from shortlists prepared by the GCG, which shortlists shall include only nominees who shall meet the Fit and Proper Rule and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC;

WHEREAS, pursuant to its mandate to formulate rules and criteria in the selection and nomination of prospective appointees to become Appointive Directors in the Boards of Directors/Trustees of GOCCs to be included in the shortlists to be submitted to the President of the Philippines, the GCG formulated the Fit and Proper Rule, conducted a series of consultations with relevant government agencies, as well as GOCCs covered by R.A. 10149, on the original terms of the Fit and Proper Rule, and the results of those consultations have been reflected in the FIT AND PROPER RULE FOR APPOINTIVE DIRECTORS AND CEOs OF GOCCs (“Fit and Proper Rule”) formally adopted by the GCG *en banc* at its meeting held on 26 April 2012 for formal submission to the President of the Philippines His Excellency’s approval as mandated under Section 16 of R.A. 10149;

WHEREAS, HIS Excellency, President Benigno S. Aquino III, formally approved the Fit and Proper Rule on _____;

NOW, THEREFORE, the Commission hereby formally promulgates and implements the Fit and Proper as follows:

I. **NATURE AND COVERAGE**

Article 1. Nature of the Rule – The Fit and Proper Rule embodies the standards, which shall include, but not be limited to, standards of integrity, experience, education, training and competence, contained in this Rule and those expressly provided for in the Charters of each GOCC, for determining whether an individual is qualified, fit and proper to be appointed to be a

member of the Board of Directors/Trustees, and elected CEO of a GOCC, or whether an incumbent Appointive Director or CEO is qualified, fit and proper to be re-appointed to, or to continue to hold such position in a GOCC.

Article 2. Definition of Terms – For purposes of this Rule, the following terms shall have the following meanings:

“Act” refers to Republic Act No. 10149, and officially named the *“GOCC Governance Act of 2011.”*

“Affiliate” refers to a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned and controlled, directly or indirectly, by the GOCC.

“Appointive Directors” (*“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 Non-chartered GOCCs, the members of its Board of Directors/Trustees whom the State nominates, or is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and (3) in the case of a Subsidiary or an Affiliate, members of its Board of Directors/Trustees whom the GOCC nominates, or is entitled to nominate, to the extent of its percentage shareholdings in such Subsidiary or Affiliate.

“Articles of Incorporation” refers to the primary franchise of a Non-chartered GOCC that, once approved and registered with the Securities and Exchange Commission (SEC) by the issuance of the certificate of incorporation under its official seal, commences the existence of the GOCC as a separate juridical person with a right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

“Board of Directors/Trustees” or *“Board”* or *“Governing Board”* refer to the collegial body that exercises the corporate powers, conducts all business, and controls or holds all properties, of a GOCC, whether it be formally referred to as the *“Board of Directors”* or *“Board of Trustees”* or some other term in its Charter, Articles of Incorporation, or By-Laws.

“By-Laws” refers to the basic instrument adopted by a Non-chartered GOCC and duly registered with the Securities and Exchange Commission (SEC) for its internal government, and to regulate the conduct and prescribe the rights and duties of its stakeholders or members to the GOCC and among themselves in reference to the management of its affairs.

“Charter” refers to the formal act of Congress creating a Chartered GOCC and defining its franchise.

“Chief Executive Officer” (*“CEO”*) refers to the highest ranking corporate executive who heads Management, who could be referred to as the President or the General Manager, Chairman or the Administrator of a GOCC.

“*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.

“*Government Financial Institutions*” (*GFI*) 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, e.g. deposits, loans, bonds and equity including, but not limited to, the Government Service Insurance System and the Social Security System.

“*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.

“*Government-Owned or -Controlled Corporation*” (“*GOCC*”) refers to any agency organized as a stock or non-stock 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 Rule, the term “GOCC” shall include GICP/GCE and GFI as defined herein.

“*Material Information*” (“*Material Fact*”) refers to information which as reasonable investor, stakeholder or Supervising Agency would consider important in determining whether: (1) to buy, sell, hold or otherwise transact with the securities issued by a GOCC; or (2) to the exercise with reasonable prudence voting rights related to securities held with such GOCC, or relating to corporate acts, contracts and transactions which would adversely affect the operations of the GOCC.

“*Officers*” refer to the executive officers of the GOCC as provided in its Charter or By-Laws, such as the CEO, President, Administrator, General Manager, Vice President, Corporate Secretary, Compliance Officer, Treasurer, Chief Financial Officer, Chief Investment Officer.”

“*Rule*” refers to the Fit and Proper Rule embodied in this memorandum circular.

“*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.

“*Term of Office*” refers to the period for which Appointive Directors are legally entitled to hold their offices which under the Act is a period of one (1) year starting from 01 July of the year of their appointment and expires on 30 June of the following year.

2.1 Singular Term Include the Plural. – Unless otherwise indicated in this Rule, any reference to a singular, shall apply as well to the plural, and *vice versa*.

Art. 3 – Coverage – This Rule shall apply to:

- (a) All the Appointive Directors and the CEOs of GOCCs and Subsidiaries; and
- (b) All the Appointive Directors of Affiliates.

Art. 4 – Certification of the Applicable Qualification and Disqualification Rules at the Start of Every Calendar Year. – Every GOCC and Subsidiary, through the Compliance Officer, or the Corporate Secretary if there is no Compliance Officer appointed, shall submit to the GCG within thirty (30) days from the start of each calendar year a certificate stating and attesting to the qualifications and disqualifications rules applicable to their Appointive Directors and CEO, as found in their Charter or By-laws and the provisions if laws, rules and regulations applicable to the particular GOCC.

II. **QUALIFICATIONS**

Art. 5. Minimum Qualifications of Appointive Directors and CEOs – Without prejudice to the qualifications set out in the Charter or By-laws of the GOCC, every Appointive Director and CEO, must:

- (a) Be a Filipino citizen;
- (b) Be at least thirty (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 indicate 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) Have attended, or will attend within three (3) months from the date of appointment, a special seminar on public corporate governance for Directors conducted by the GCG or any individual or entity accredited by the GCG.

III. DISQUALIFICATIONS

Art. 6. *Disqualifications of Appointive Directors and CEOs* – Without prejudice to specific provisions of law, rules and regulations of Supervising Agencies prescribing disqualifications for Appointive Directors, the following are the disqualifications rules for Appointive Directors and CEOs:

6.1 Permanent Disqualification. – The following individuals are permanently disqualified from appointment or re-appointment, or to continue holding the position of Appointive Directors, the following are the disqualification rules for Appointive Directors and CEOs:

- (a) Persons who have been convicted by final judgment of a court or tribunal of:
 - (i) A crime or offense involving dishonesty or breach of trust such as, but not limited to estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, or bribery; violation of the Bouncing Checks Law, the Anti-Graft and Corrupt Practices Act, prohibited acts and transactions under Section 7 of the Code of Conduct and Ethical Standards for Public Officials and Employees, violation of banking laws, rules and regulations; Provided, however, that when the penalty imposed in the final judgment of conviction is censure or reprimand, the GCG shall determine from the terms of the judgment whether it shall constitute a ground for permanent or temporary disqualification;
 - (ii) A crime or offense where the sentence imposed is a term of imprisonment of at least six (6) years and one (1) day; or
 - (iii) A violation of the laws, rules and regulations particularly applicable to the sector under which the GOCC is classified, and in other related sectors;
- (b) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;
- (c) Directors, CEOs and Officers of GOCCs who have been:
 - (i) found by a competent administrative body as administratively liable for violation of laws, rules and regulations particularly applicable to the sector of the GOCC concerned, as well as those covered by related sectors, and where a penalty of removal from office is imposed, which finding of the administrative body has become final and executory;
 - (ii) determined by the Commission on Audit (COA) pursuant to a Notice of Disallowance which has become final and executory, to have, by virtue of their office, acquired or received 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 rights, options or 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, or

(iii) found to be culpable for a GOCC's insolvency, closure, or ceasure of operations, as determined by the GCG in consultation with the appropriate Government Agency;

(d) Directors and Officers of private corporations, or any person found by the GCG in consultation with the appropriate Government Agency, to be unfit for the position of Appointive Director because they were found administratively liable by such Government Agency for:

(i) a violation of laws, rules and regulations relevant to the sector of the GOCC concerned, as well as in related sectors; or

(ii) any offense/violation involving dishonesty or breach of trust;

and which finding of such Government Agency has become final and executory.

6.2. Temporary Disqualification. – The following individuals are temporarily disqualified from appointment or re-appointment, or to continue holding the position of Appointive Director or CEO in any GOCC, as the case may be, thus:

(a) Persons who refused or failed to fully disclose the extent of their business interest or any Material Information to the GCG, the appropriate Government Agency or the GOCC concerned, when required by a circular, memorandum, rule or regulation, applicable to such institutions; and such disqualifications shall be in effect as long as the refusal or failure persists;

(b) Appointive Directors who have been absent or who have not participated for whatever reason in more than fifty percent (50%) of all meetings, both regular and special, of the Board during the immediately preceding semester, or who failed to attend for whatever reasons at least twenty-five percent (25%) of all board meetings in any year; Provided, however, that such temporary disqualification applies only for purposes of the immediately succeeding appointment for a new Term of Office;

(c) Persons who are delinquent in the payment of obligations as defined hereunder:

(c-1) Delinquency in the payment of obligations means the failure to pay according to the terms of the contracted obligation with a GOCCC, Subsidiary or Affiliate or with a private corporation, within at least sixty (60) days from formal demand.

(c-2) Obligations shall include all borrowings obtained by:

- (i) A Director or Officer for his/her own account or as the representative or agent of others or where he/she acts as a guarantor, endorser or surety for loans from such institutions;
- (ii) The spouse or child under the parental authority of the Director or Officer;
- (iii) Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a Director or Officer;
- (iv) A partnership in which a Director or Officer, or his/her spouse, is the managing partner or a general partner owning a controlling interest in the partnership; and
- (v) A corporation, association or firm wholly-owned or majority of the capital of which is owned, by any group or a group of persons mentioned in the foregoing items (i), (iii) and (iv).

(c-3) Such temporary disqualification shall be in effect as long as the delinquency persists.

(d) Persons who have been convicted in the first instance by a court for:

- (i) any offense involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, or bribery;
- (ii) a violation of the Bouncing Checks Law, the Anti-Graft and Corrupt Practices Act, prohibited acts and transactions under Section 7 of the Code of Conduct and Ethical Standards for Public Officials and Employees;
- (iii) A violation of banking laws, rules and regulations;
- (iv) An offense where the penalty imposed is to serve a minimum term of imprisonment of more than six (6) years;

but whose conviction has not yet become final and executory; Provided, however, that such temporary disqualification shall automatically cease upon receipt by the GCG of a certified true copy of a judgment amounting to an acquittal;

(e) Directors and Officers of private corporations which have been officially declared insolvent, dissolved or closed, pending their clearance by the GCG in consultation with the appropriate Government Agency;

- (f) Directors disqualified for failure to observe/discharge their duties and responsibilities prescribed under the Ownership and Operations Manual Governing the GOCC sector, the Code of Corporate Governance for GOCCs, their respective manuals of corporate governance adopted by the GOCCs, or existing rules and regulations of the GCG; and such temporary disqualification applies until the lapse of the specific period of disqualification or upon approval by the GCG of such Directors' appointment/reappointment;
- (g) Directors who failed to attend within three (3) months from their appointment and assumption of office the public corporate governance seminar for Directors conducted by the GCG or any individual/entity accredited by the GCG; Provided, however, that such disqualification shall cease when the Director concerned has submitted to the GOCC an official certification that he/she has attended such seminar;
- (h) Persons dismissed/terminated from employment for just cause; Provided, however, that such temporary disqualification will cease when they have cleared themselves of involvement in the alleged irregularity;
- (i) Persons who are under preventive suspension, whether it be in the government service or in private sector service; Provided, however, that GCG shall determine from the cause for the preventive suspension whether it shall constitute a ground for temporary disqualification;
- (j) Persons with derogatory records as certified by, or on the official files of, the Judiciary, the National Bureau of Investigation (NBI), the Philippine National Police (PNP), the Ombudsman, quasi-judicial bodies, other government agencies, international police, monetary authorities and similar agencies or agencies of foreign countries, for irregularities or violations of any law, rules and regulations that would adversely affect the integrity of the Director, CEO, or Officer, or the ability to have effectively discharge his/her duties; and this disqualification applies until they have cleared themselves of the alleged irregularities/violations, or after a lapse of five (5) years from the time complaint, which was the basis of the derogatory record, was initiated; Provided, however, that GCG shall determine from the nature of the derogatory record whether it shall constitute a ground for temporary disqualification;
- (k) Directors and Officers of private corporations or GOCCs found by appropriate Government Agency as administratively liable for violation of laws, rules and regulations relevant to the sector of the GOCC, as well as in related sectors, where a penalty of suspension from office or fine is imposed, regardless whether the finding of the appropriate Government Agency is final and executory or pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court; and such disqualification shall be in effect during the period of suspension or so long as the fine is not fully paid; or
- (l) Persons with conflict of interest as defined under the Code of Conduct and Ethical Standards for Public Officials and Employees and its Implementing Rules and Regulations, and this disqualification applies until the conflict of interest is resolved.

IV

HIGHEST STANDARDS PRINCIPLE

Art. 7. The foregoing qualification and disqualification rules for Appointive Directors and CEOs shall be in addition to those prescribed or imposed under other existing applicable laws and regulations, particularly with respect to the following industries:

- 7.1. For GOCCs the jurisdiction of the Bangko Sentral ng Pilipinas (BSP), the qualifications prescribed or the disqualification imposed under the General Banking Law of 2000, and those prescribed or imposed by the BSP in the Manual of Regulations for Banks (MORB), and amending or supplementing circulars, shall also apply.
- 7.2. For GOCCs under the jurisdiction of the Insurance Commission (IC), the qualifications prescribed or disqualifications imposed by IC in the Code of Corporate Governance Principles and Leading Practices, and amending or supplementing circulars, shall also apply.
- 7.3. For GOCCs which are public companies or listed companies covered by the Securities Regulation Code, the qualifications prescribed or disqualifications imposed therein, those prescribed by the Securities and Exchange Commission (SEC) under its Revised Code of Corporate Governance, those prescribed by the Philippine Stock Exchange (PSE) for listed companies, an amending or supplementing circulars, shall also apply.

V

PRINCIPLES AND EFFECTS

Art. 8. Possession of Qualifications and Non-Possession of Disqualifications – The possession of all the qualifications and the non-possession of any of the disqualifications under this Rule shall be a continuing requirement for an Appointive Director and CEO during the entire Term of Office and tenure in the Board.

Art. 9. Effect of Non-Possession of Qualifications and/or Possession of Disqualification – A prospective appointee who does not possess all the qualifications and/or has any of the disqualifications provided for in this Rule shall not be included in the shortlist to be submitted to the President. In the same manner, an incumbent Appointive Director who no longer has all the qualifications and/or has incurred any of the disqualifications provided in this Rule shall not be qualified for reappointment.

- 9.1. An Appointive Director, prior to assuming the position to which he/she was appointed, shall submit to the Compliance Officer, or Corporate Secretary if no Compliance Office has been appointed, a sworn certification that he/she possesses all qualifications and none of the disqualifications pertaining to the position as found in the Charter or By-laws, the provisions of laws, rules and regulations applicable to the GOCC, and as provided for in this Rule.
- 9.2. Subject to the requirements of due process, and Appointive Director or CEO who has been appointed/elected but in fact did not possess all the requisite qualifications and/or has any of the

disqualifications at the time of his/her appointment/election, shall be recommended by the GCG for removal from office for cause to the President, in case of the Appointive Director, and to the Governing Board, in the case of a CEO, even if he/she assumed the position to which he/she was elected or appointed.

9.3. Subject to the requirements of due process, an incumbent Appointive Director or CEO who no longer possesses all the qualifications and/or has incurred any of the disqualifications during his/her tenure, shall be recommended by the GCG for removal for cause to the President of the Philippines, in the case of an Appointive Director, and to the Governing Board, in the case of the CEO.

Art. 10. Certification Upon Assumption Into Office by Appointive Directors and CEO – Every GOCC, through its Compliance Officer, or the Corporate Secretary if no Compliance Officer has been appointed, shall provide the GCG the sworn certifications submitted by each of the Appointive Directors and CEO that he/she possesses all the qualifications and none of the disqualifications pertaining to their positions as found in the charter or by-laws, the provisions of laws, rules and regulations applicable to the GOCC, and provided for in the FI and Proper Rule within thirty (30) days after the assumption into office of the Appointive Directors and CEO for each new Term of Office.

VI

MISCELLANEOUS PROVISIONS

Art. 11. Amendments. – This Rule may be amended by the GCG with the approval of the President of the Republic of the Philippines through the issuance of a memorandum circular duly published in the GCG's website and copy formally submitted to the UP Law Center.

Art. 12. Effectivity. – This Rule shall be effective fifteen (15) days after it is published in the GCG's website and from the date formal copy is received by the UP Law Center.

Adopted by a unanimous vote of the Board of Directors, this 17th day of January 2014.

HON. JOSEPH EMILIO A. ABAYA
Chairman of the Board
Civil Aviation Authority of the Philippines