

MANUAL OF CORPORATE GOVERNANCE

Philippine International Trading Corporation

I. INTRODUCTION

Corporate Governance refers to “a key element in improving economic efficiency and growth as well as enhancing investors’ confidence. It involves a set of relationships between a corporation’s Management, its Board, its shareholders and other stakeholders. It also provides the structure through which the objectives of a corporation are set, and the means of achieving those objectives and monitoring performance are determined”.

The machinery for corporate governance of the Philippine International Trading Corporation (“PITC” or “Corporation”) is principally contained in the Corporation’s Charter¹ and the By-Laws and their amendments. They are supplemented by the R.A. No. 10149, otherwise known as the *GOCC Governance Act of 2011* and the Code of Corporate Governance for GOCCs². These documents lay down, among others, the basic structure of governance, minimum qualifications of directors, and the principal duties of the Board of Directors and officers of the Corporation. The purpose of the issuance of the Manual of Corporate Governance is to supplement and complement the Corporation’s Charter and By-Laws by setting forth the principles of good corporate governance. All the terms used herein are used within the meanings assigned to them by said laws and implementing rules and regulations.

Incorporating lessons learned from corporate governance reforms in the private sector,³ as well as international guidelines on corporate governance,⁴ the corporate governance framework for the Corporation shall be governed by the following principles:⁵

- a. The Corporation shall promote transparency, accountability and fairness, and its business shall be conducted strictly in accordance with the rule of law and shall be supportive of the primary goals and objectives of the government.
- b. Timely and accurate disclosure shall be made on all material aspects and development regarding the Corporation, including its financial condition, performance, ownership, and governance.
- c. The strategic guidance of the Corporation shall be in accord with the objectives set by the government, the effective monitoring of Management by the Board, and the Board’s accountability to the Corporation and the shareholders.

¹ Presidential Decree No. 1071, as amended.

² GCG Memorandum Circular No. 2012-07.

³ Pursuant to Republic Act No. 8799 or the Securities Regulation Code of 2000, the Securities and Exchange Commission (SEC) issued Memorandum Circular No. 02-02 dated 5 April 2002 providing for a Code of Corporate Governance for corporations whose securities are registered or listed, corporations which are grantees of permits/licenses and secondary franchise from the SEC, and public companies, and branches or subsidiaries of foreign corporations operating in the Philippines whose securities are registered or listed. The Insurance Commission (IC) has also issued Insurance Circular Letter No. 31-05 dated 26 September 2005 updating its Corporate Principles and Leading Practices, which was first issued in 2003, for adoption and compliance by all insurance companies and intermediaries authorized to do business in the Philippines.

⁴ The international benchmark on corporate government is provided by the OECD Principles of Corporate Governance (2004) and OECD Guidelines on Corporate Governance of State-Owned Enterprises (2005), at <http://www.oecd.org>. The paper “Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets”, The World Bank Corporate Governance, May 2006, is also useful in identifying the specific areas of corporate governance reform in state-owned enterprises, at <http://rru.worldbank.org/Documents/Other/CorpGovSOEs.pdf>.

⁵ Organization for Economic Cooperation and Development (OECD) Principles of Corporate Governance.

- d. The exercise of shareholders' rights, when applicable, shall be protected and facilitated. Also, when applicable, the Corporation shall ensure the equitable treatment of all shareholders, including minority shareholders.
- e. Active cooperation between the Corporation and its stakeholders in creating wealth, jobs, and the sustainability of a financially sound enterprise shall be encouraged.

The Board of Directors and Management; the officers and employees of Philippine International Trading Corporation hereby commit themselves to the principles and the best practices contained in this Manual, and acknowledge that the same may guide the attainment of their corporate goals. The Corporation shall make a continuing effort to create awareness of a good corporate governance within the organization.

II. GOVERNANCE

1. The Board of Directors

1.1 Composition

The Board, having been created by special law, shall have a Board of Directors composed of the following:

***Ex Officio* Directors⁶. –**

- a) The Secretary of the Department of Trade and Industry, as Chairman;
- b) The Director-General of the National Economic and Development Authority;
- c) The Vice Chairman of the Board of Investments;
- d) The General Manager of the National Development Company;
- e) The Secretary of the Department of Environment and Natural Resources;
- f) The Chairman of the Board of Governors of the Development Bank of the Philippines;
- g) The President of the Philippine National Bank;

Ex Officio Alternates. - *Ex Officio* Directors may designate their respective alternates, who ideally should be the officials next-in rank to them, and whose acts shall be considered the acts of their principals⁷.

Appointive Directors⁸. –

- a) The President of the Corporation, as Vice Chairman;
- b) A representative from the Office of the President; and
- c) A representative from the private sector.

1.2 Qualifications

No person shall be appointed as member of the Board unless he is a Filipino citizen, of good moral character and of unquestionable integrity and responsibility and reputed to have considerable experience in foreign trading operations.

⁶ Section 3 (i), R.A. 10149.

⁷ GCG Memorandum Circular No. 2012-08 dated May 23, 2013 citing Section 14, R.A. 10149, Section 2(g), E.O. No. 24 (s.2011).

⁸ Sections 15 and 17, R.A. 10149.

Minimum Qualifications of Appointive Directors and CEO⁹. - Without prejudice to the qualifications set out above, 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 Board;
- (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 Corporation 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.

1.3 Disqualifications

Permanent Disqualification of Board members. The following persons are disqualified from sitting as members of the Board:

- a. Any person convicted by final and executory judgment of an offense involving moral turpitude or fraudulent acts or transgressions.
- b. Any person judicially declared to be insolvent.
- c. Any person finally found guilty by a court of competent jurisdiction or equivalent administrative agency of acts, violations or misconduct specified in the foregoing paragraphs.
- d. Any person engaged in any business that competes with or is antagonistic to that of the corporation. Without limiting the generality of the foregoing, a person shall be deemed so engaged:
 - (1) if he is an officer, manager or shareholder, or the owner (either of record or beneficially) of ten percent (10%) or more of any outstanding class of shares of any corporation (other than one in which the corporation owns at least thirty percent [30%] of the capital stock) engaged in the business which the Board, by a vote of at least three-fourths (3/4), determines to be competitive or antagonistic to the corporation; or
 - (2) if he is the owner (either of record or beneficially) of ten percent (10%) or more of any outstanding class of shares of, any other corporation or entity engaged in any line of business of the corporation, when in the judgment of the Board, by a vote of at least three-fourths (3/4), the laws against combinations in restraint of trade shall be violated by such person's membership in the Board; or
 - (3) if the Board, in the exercise of its judgment in good faith, determines by a vote of at least three-fourths (3/4) that he is a nominee of either of the persons referred to in the two (2) preceding paragraphs.

⁹ Art. 5, GCG Memorandum Circular No. 2012-05.

In determining whether or not a person is a controlling person, beneficial owner, or the nominee of another, the Board may take into account such factors like business and family relations.

Temporary Disqualification of Incumbent Board Members. The following are grounds for temporary disqualification of incumbent Board members:

- a. Refusal to disclose the extent of his business interest, which is necessary to enable the Board to determine if the member is engaged in a business which competes with or is antagonistic to the Corporation. This disqualification is effective as long as his refusal persists.
- b. Absence in more than fifty percent (50%) of all regular and special meetings of the Board during his incumbency, or any twelve (12) month period during said incumbency, unless the absence is due to illness, death in the immediate family or serious accident. This disqualification shall apply for purposes of the succeeding election.
- c. Dismissal/termination from the Board of another corporation for cause. This disqualification shall be in effect until he has cleared himself of any involvement in the alleged irregularity.
- d. Being under preventive suspension by the Corporation for any reason.
- e. Conviction that has not yet become final as referred to in the grounds for permanent disqualification of board members.

Disqualifications of Appointive Directors and CEOs¹⁰. – Without prejudice to the above set of disqualifications for Directors, the following are the disqualification rules for Appointive Directors and CEOs:

(1) Permanent Disqualification¹¹. - The following individuals are permanently 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 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

¹⁰ Art. 6, GCG Memorandum Circular No. 2012-05.

¹¹ Art. 6.1, GCG Memorandum Circular No. 2012-05.

- (iii) a violation of the laws, rules and regulations particularly applicable to the sector under which the Corporation 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 Corporation, 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 Corporation has an interest, using the rights, options or properties of the Corporation for their own benefit, receiving commission on contracts from the Corporation's assets, or taking advantage of corporate opportunities of the Corporation; or
 - (iii) found to be culpable for the Corporation'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.

(2) Temporary Disqualification¹². - 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 pursuant to the requirements of the Securities Regulation Code, the Corporation Code of the Philippines, or any other relevant provision of law, as well as when required by a circular, memorandum,

¹² Art. 6.2, GCG Memorandum Circular No. 2012-05.

rule or regulation, applicable to such institutions; and such disqualification 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 process for a new Term of Office;

(c) Persons who are delinquent in the payment of their 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 GOCC, 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 or a group of persons mentioned in the foregoing Items (i), (ii) 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; or

- (iv) an offense where the penalty imposed is to serve a maximum 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 or 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 authorities 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 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 the 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 the appropriate Government Agency as administratively liable for violation of laws, rules and regulations relevant to the sector of the Corporation, 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.

1.4 Policy on Multiple Board Seats

The capacity of Appointive Directors to serve with diligence shall not be compromised. As such no Appointive Director may hold more than two (2) board seats in other GOCCs, Subsidiaries and/or Affiliates.

1.5 Fiduciary Capacity of the Board Members. A Board Member assumes a position of trust and confidence and as such, he must act in the best interest of the Corporation. His actions must be characterized by transparency, accountability, fairness and responsibility and he must exercise leadership, prudence and integrity in directing the Corporation towards sustained progress over the long term. In this regard, the duties and responsibilities of a Board member include the following:

- a. Conduct fair business transactions with the Corporation ensuring that personal interest does not compromise Board decisions. The basic principle to be observed is that a board member shall not use his position to make profit or to acquire benefit or advantage for himself or his related interests. He should avoid situations that may compromise his impartiality. If an actual or potential conflict of interest arises on the part of board members or senior executives, it must be fully disclosed and the concerned director should not participate in the decision-making. A board member who has a continuing conflict of interest of a material nature should consider resigning;
- b. Devote time and attention necessary to the proper discharge of his duties and responsibilities. A Board Member should devote sufficient time to familiarize himself with the Corporation's business and should be constantly aware of the Corporation's condition and be knowledgeable enough to contribute meaningfully to the Board's work. He should attend and actively participate in Board meetings, request and review meeting materials, ask questions, and request explanations;
- c. Act judiciously. Before deciding on any matter brought before the Board, a Board member should thoroughly evaluate the issues, ask questions and seek clarifications when necessary;
- d. Exercise independent judgment. A Board Member should view each problem/situation objectively. When a disagreement with other Board members occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollary thereto, he should support plans and ideas that he thinks are beneficial to the Corporation;
- e. Gain a working knowledge of the statutory and regulatory requirements affecting the Corporation, including the contents of the Revised PITC Charter, and By-Laws, applicable laws, rules and regulations. A Board member should also keep

himself informed of industry developments and business trends in order to safeguard the Corporation's competitiveness;

- f. Observe confidentiality. A Board member should observe the confidentiality of non-public information acquired by reason of his position as director. He should not disclose any information to any other person without the authority of the Board; and
- g. Ensure the presence and adequacy of internal control mechanisms for good governance. The minimum internal control mechanisms for the Board's oversight responsibility include, but shall not be limited to: (i) ensuring the presence of organizational and procedural controls, supported by an effective management information system and risk management reporting system; (ii) reviewing conflict of interest situations and providing appropriate remedial measures for the same; (iii) reviewing proposed key executive appointments; (iv) ensuring the selection, appointment and retention of qualified and competent management; and (v) reviewing the Corporation's personnel and human resources policies, compensation plan and the management succession plan.

1.6 Collective and Individual Liability of Board Members. There should be no difference between the liabilities of the Board members, whether nominated by the government or other shareholders.

Board members who willfully and knowingly vote or consent to patently unlawful acts of the Corporation or who are guilty of gross negligence or bad faith in directing the affairs of the Corporation or acquire any personal or pecuniary interest in conflict with their duty as such members, shall be liable jointly and severally for all damages resulting therefrom suffered by the Corporation, shareholders, stakeholders and/or persons, without prejudice to the imposition of criminal or administrative penalties.

In addition, when a Board member attempts to acquire or acquires, in violation of his duty, any interest adverse to the Corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the Corporation and must account for the profits which otherwise would have accrued to the Corporation.

Any Board member who enters into a transaction or contract grossly disadvantageous to the government, whether he profited from it or not, shall be liable for violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

1.7 Exercise of Objective and Independent Judgment. Good practice calls for the separation of the positions of Chairman and President/Chief Executive Officer ("CEO") to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision-making.

1.8 Periodic Performance Evaluation for Directors (PED). The overall performance of all Appointive and *Ex Officio* Directors or their Alternates shall be evaluated in accordance with the GCG Memorandum Circular No. 2014-03 [Performance Evaluation for Directors (PED) in the GOCC Sector] dated 07 April 2014. The PED covers the Appointive Directors for the determination of whether they shall be recommended for reappointment. The PED also covers the *Ex Officio* Directors or their Alternates for purposes of being able to report to the President the performance of such *Ex Officio* Directors.(n)

III. **BOARD COMMITTEES**

When necessary, the Board shall set up specialized committees to support the performance of its functions. When the creation of specialized committees is not mandated by law or by the Revised PITC Charter, the Board shall define the cases in which the said committees may be considered by using a combination of criteria, including the size of the Corporation. It is essential that specialized board committees are chaired by a non-executive and include a sufficient number of independent members. The existence of specialized board committees should not excuse the Board from its collective responsibility in all matters. Specialized board committees should have written terms of reference that define their duties, authority and composition. Specialized board committees should report to the Board and the minutes of their meetings should be circulated to all board members.

As a minimum, however, the Board shall be supported by the following specialized committees:

1. **Executive Committee**

The Board shall create an Executive Committee composed of not less than three (3) members of the Board, with the Vice-Chairman of the Board being the Committee Chairman.

The Executive Committee, in accordance with the authority granted by the Board, or during the absence of the Board, shall act by a vote of at least two-thirds (2/3) of its members on such specific matters within the competence of the Board as may from time to time be delegated to the Executive Committee, except with respect to:

- (a) Approval of any action for which shareholders' approval is also required;
- (b) Filling of vacancies on the Board or in the Executive Committee;
- (c) Amendment or repeal of By-Laws or the adoption of new By-Laws;
- (d) Amendment or repeal of any resolution of the Board which by its express terms cannot be amended or subject to repeal;
- (e) Distribution of cash dividends; and
- (f) Exercise of powers delegated by the Board exclusively to other committees.

2. **Governance and Audit Committee**

There shall be a Governance and Audit Committee which shall consist of at least three (3) Directors, whose Chairman should have audit, accounting or finance background. The Governance and Audit Committee shall assist the Board of Directors in fulfilling its corporate governance responsibilities. The Committee shall be responsible for the following:

AUDIT COMMITTEE'S RESPONSIBILITIES

- (a) Overseeing, monitoring and evaluating the adequacy and effectiveness of the Corporation's internal control system, engage and provide oversight of the Corporation's internal and external auditors and coordinate with the Commission on Audit (COA);
 - a.1 Reviewing and approving audit scope and frequency, the annual internal audit plan, quarterly, semi-annual and annual financial statements before submission to the Board, focusing on changes in accounting

policies and practices, major judgmental areas, significant adjustments resulting from the audit, going concern assumptions, compliance with accounting standards, and compliance with tax, legal, regulatory and COA requirements;

- a.2 Receiving and reviewing reports of internal and external auditors and regulatory agencies, and ensuring that Management is taking appropriate corrective actions, in a timely manner in addressing control and compliance functions with regulatory agencies;
- a.3 Ensuring that internal auditors have free and full access to all the Corporation's records, properties and personnel relevant to and required by its function and that the internal audit activity shall be free from interference in determining its scope, performing its work and communicating its results; and
- a.4 Developing a transparent financial management system that will ensure the integrity of internal control activities throughout the Corporation through a procedures and policies handbook that will be used by the entire organization.

GOVERNANCE COMMITTEE'S RESPONSIBILITIES

- (b) Overseeing the periodic performance evaluation of the Board and its committees and Management; the periodic evaluation of the Appointive and *Ex Officio* shall be in accordance with the GCG Memorandum Circular No. 2014-03 [Performance Evaluation for Directors (PED) in the GOCC Sector] dated 07 April 2014;(a)
 - b.1 Deciding whether or not a Director is able to and has been adequately carrying out his/her duties as director bearing in mind the director's contribution and performance (e.g., competence, candor, attendance, preparedness and participation). Internal guidelines shall be adopted that address the competing time commitments that are faced when directors serve on multiple boards;
 - b.2 Recommending to the Board regarding the continuing education of Directors, assignment to Board Committees, succession plan for the Executive Officers, and their remuneration commensurate with corporate and individual performance; and
 - b.3 Recommending the manner by which the Board's performance may be evaluated and proposing objective performance criteria to be approved by the Board. Such performance indicators shall address how the Board will enhance long-term shareholder value.

3. Risk Management Committee

The Risk Management Committee shall consist of at least three (3) members, with at least one member having a background in finance and investments. The Risk Management Committee shall be responsible for the following:

- (a) Performing oversight risk management functions specifically in the areas of managing credit, market, liquidity, operational, legal, reputational and other risks of the Corporation, and crisis management, which shall include receiving from Management periodic information on risk exposures and risk management activities;
- (b) Developing the Risk Management Policy of the Corporation, ensuring compliance with the same and ensure that the risk management process and compliance are embedded throughout the operations of the Corporation, especially at the Board and Management level; and
- (c) Providing quarterly reporting and updating the Board on key risk management issues as well as ad hoc reporting and evaluation on investment proposals.

IV. **MANAGEMENT**

The Management stands as the locus of decision-making for the day-to-day affairs of the Corporation. It determines the Corporation's activities by putting its targets in concrete terms and by implementing basic strategies for achieving these targets. It also puts in place the infrastructure for the Corporation's success by establishing the following mechanisms in its organization: organizational structures that work effectively and efficiently in attaining the goals of the Corporation; useful planning, control and risk management systems that assess risks on an integrated cross-functional approach; information systems that are defined and aligned with an information technology strategy and the business goals of the Corporation; and a succession plan that formalizes the process of identifying, training and selection of successors in key positions in the Corporation.

4.1 Management Should Be Primarily Accountable to the Board. Management is primarily accountable to the Board for the operations of the Corporation. As part of its accountability, it is obligated to provide the Board with complete and adequate information on the operations and affairs of the Corporation in a timely manner.

4.2 Executive Officers

a. President/CEO¹³ - Vice Chairman of the Board

The President shall be a Filipino citizen, of good moral character and of unquestionable integrity and responsibility and reputed to have considerable experience in foreign trading operations.

The President/CEO shall be elected annually by the members of the Board from among its ranks, which means that a would-be President/CEO must first have been qualified under the Fit and Proper Rule, and appointed by the President of the Philippines into the Board, and only thereafter will he/she be qualified to be elected as the CEO of the Corporation¹⁴.

The President/CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause¹⁵.

¹³ The Chief Executive Officer (CEO) is defined under Section 3(g) of R.A. 10149 as "*the highest ranking corporate executive, who could be the President or the General Manager, Chairperson or the Administrator of a GOCC.*" On the other hand, Section 18 of R.A. 10149 refers to the CEO as "*the highest ranking officer provided in the charters of the GOCCs.*"

¹⁴ GCG Memorandum Circular No. 2012-09 dated 09 October 2012.

¹⁵ Sec. 18, R.A. No. 10149

The President/CEO shall be the Vice Chairman of the Board and is ultimately accountable for the Corporation's organization and procedural controls. In addition to the duties imposed on him by the Board, the President shall:

- (1) Exercise general supervision of the business, affairs, and property of the Corporation, and over its employees and officers;
- (2) See to it that all orders and resolutions of the Board are carried into effect;
- (3) Submit to the Board as soon as possible after the close of each fiscal year, and to the shareholders at the annual meeting, if applicable, a complete report of the operations of the Corporation for the preceding year, and the state of its affairs; and
- (4) Report to the Board from time to time all matters which the interest of the Corporation may require to be brought to its notice.

The President/CEO shall have such other responsibilities as the Board may impose upon him.

b. Corporate Treasurer

The Treasurer of the Corporation shall have charge of the funds, securities, receipts and disbursements of the Corporation. He shall have the following functions:

- (1) Deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in compliance with applicable laws, rules and regulations.
- (2) Regularly and at least every quarter render to the President/CEO or to the Board an account of the fund condition of the company and all of his transactions as such.
- (3) Ensure fund availability on a timely basis and at the most economical means.
- (4) Optimize yields in temporary excess funds.
- (5) Provide relevant and timely financial market information.
- (6) Perform such other responsibilities as the Board may impose.

c. Chief Finance Officer ("CFO")

The CFO who may also be the Head/Chief Accountant of the Corporation shall be responsible for the following:

- (1) Provide management with accurate, relevant, and timely operating and financial reports and analysis necessary for financial planning and strategy formulation, and monitor actual implementation of budgets, plans and programs towards the achievement of corporate goals;

- (2) Maintain the integrity of accounting records as the basis of the financial statements and reports provided to Management for decision-making and to government regulatory bodies in compliance with statutory requirements;
- (3) Promote investor and public confidence in the Corporation by addressing the various information requirements of the investing public and ensuring that all other legal reportorial obligations to the concerned agencies are complied with; and
- (4) Strengthen internal controls by monitoring compliance with policies and recommending to Management appropriate actions and changes in systems and procedures in the exigencies of the service.
- (5) Perform such other responsibilities as the Board may impose.

d. **Corporate Secretary**

The Corporate Secretary shall be a resident and citizen of the Philippines. He must possess organizational and interpersonal skills, and the legal skills of a Chief Legal Officer. The Corporate Secretary shall have the following functions:

- (1) Serve as an adviser to the Board members on their responsibilities and obligations;
- (2) Keep the minutes of meetings of the shareholders, the Board, the Executive Committee, and all other committees in a book or books kept for that purpose, and shall furnish copies thereof to the Chairman, the President/CEO and other members of the Board as appropriate;
- (3) Keep in safe custody the seal of the corporation and affix it to any instrument requiring the same;
- (4) For stock corporations, have charge of the stock certificate book and such other books and papers as the Board may direct;
- (5) Attend to the giving and serving of notices of Board and shareholder meetings, if applicable;
- (6) Be fully informed and be part of the scheduling process of other activities of the Board;
- (7) Prepare an annual schedule of Board meetings and the regular agenda of meetings and put the Board on notice of such agenda at every meeting;
- (8) Oversee the adequate flow of information to the Board prior to meetings; and
- (9) Ensure fulfillment of disclosure requirements to regulatory bodies.

The Corporate Secretary shall have such other responsibilities as the Board may impose upon him. The Board shall have separate and independent access to the Corporate Secretary.

e. **Compliance Officer**

The Board shall appoint a Compliance Officer who shall report directly to the Chairman. The Compliance Officer shall perform the following duties:

- (a) Monitor compliance by the Corporation of the requirements under R.A. No. 10149, the Code of Corporate Governance, the rules and regulations of the appropriate Government Agencies and, if any violations are found, report the matter to the Board and recommend the imposition of appropriate disciplinary action on the responsible parties and the adoption of measures to prevent a repetition of the violation;
- (b) Appear before the GCG when summoned in relation to compliance with the Code of Corporate Governance or other compliance issues; and
- (c) Issue a certification every 30 May of the year on the extent of the Corporation's compliance with the government corporate standards governing GOCCs for the period beginning 01 July of the immediately preceding calendar year and, if there are any deviations, explain the reason for such deviation.

The appointment of a Compliance Officer shall not relieve the Governing Board of its primary responsibility vis-à-vis the State, acting through the GCG, to ensure that the Corporation has complied with all its reportorial, monitoring and compliance obligations.

f. The Corporation may have an **Executive Vice President** and such **Vice Presidents** and **Assistant Vice Presidents** as may be required for the effective operation of the Corporation.

During the absence or incapacity of the President of the Corporation, the Executive Vice President shall act as Chief Executive of the Corporation. He shall exercise the powers and perform duties as may be delegated to him by the President of the Corporation or assigned to him by the Board of Directors.

g. **Auditors**

The Chairman of the Commission on Audit shall appoint the auditor of the Corporation.

V. **DUTIES AND OBLIGATIONS OF DIRECTORS AND OFFICERS¹⁶**

5.1 **Fiduciaries of the State.** – Directors and Officers are fiduciaries of the State in that: (a) they have the legal obligation and duty to always act in the best interest of the Corporation, with utmost good faith in all dealings with the properties, interests and monies of the Corporation; and (b) they are constituted as trustees in relation to the properties, interests and monies of the Corporation.

5.2 **Directors and Officers as Public Officials.** – Directors and Officers are also Public Officials as defined by, and are therefore covered by the provisions of the “Code of Conduct and Ethical Standards for Public Officials and Employees”, with its declared

¹⁶ GCG Memorandum Circular No. 2012-07.

policies: (a) to promote a high standard of ethics in public service; and (b) Public Officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

5.3 Respect for and Obedience to the Constitution and the Law. – As Public Officials, a Director or Officer shall respect and obey the Constitution, and shall comply, and cause the Corporation to faithfully and timely comply, with all legal provisions, rules and regulations, and corporate governance standards, applicable to them and to the Corporation in which they serve, and to act within the bounds of their Charter and the By-Laws.

5.4 Duty of Diligence. – The fiduciary duty of diligence of Directors and Officers to always act in the best interest of the Corporation, with utmost good faith in all its dealings with the property and monies of the Corporation, which includes the obligation to:

(a) Exercise extraordinary diligence, skill and utmost good faith in the conduct of the business and in dealing with the properties of the Corporation, using the utmost diligence of a very cautious person with due regard to all the circumstances;

(b) Apply sound business principles to ensure the financial soundness of the Corporation; and

(c) 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. Every Director or Officer, by the act of accepting such position in the Corporation, affirms and agrees:

(1) to have a working knowledge of the statutory and regulatory requirements affecting the Corporation he is to serve, including the contents of its Charter, and the By-laws, the requirements of the GCG, and where applicable, the requirements of other Supervising Agencies; and

(2) to always keep himself informed of industry developments and business trends in order to safeguard the Corporation's interests and preserve its competitiveness.

5.5 Duty of Loyalty. – The fiduciary duty of loyalty of Directors and Officers to always act in the best interest of the Corporation, with utmost good faith in all its dealings with the property and monies of the Corporation, includes the obligation to:

(a) Act with utmost and undivided loyalty to the Corporation;

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

(c) Avoid (1) taking for themselves opportunities related to the Corporation's business; (2) using the Corporation's property, information or position for personal gain; or (3) competing with the Corporation's business opportunities.

5.6 Avoid Conflict of Interest. – Directors and Officers shall at all times avoid any actual or potential conflict of interest with the Corporation. Each shall also avoid any conduct, or situation, which could reasonably be construed as creating an appearance of a conflict of interest.

Any question about a Director's or Officer's actual or potential conflict of interest with the Corporation shall be brought promptly to the attention of the Chairman of the Board, who will review the question and determine an appropriate course of action.

5.7 Trustee Relation to the Corporation's Properties, Interests and Monies.

– Except for the per diem received for actual attendance in board meetings and the reimbursement for actual and reasonable expenses and incentives as authorized by the GCG, any and all realized and unrealized profits and/or benefits including, but not limited to, the share in the profits, incentives of Directors or Officers in excess of that authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where the Corporation is a stockholder or investor, and any benefit from the performance of Directors or Officers acting for and in behalf of the Corporation in dealing with its properties, investments in other corporations, management of Subsidiaries and other interest, are to be held in trust by such Director or Officer for the exclusive benefit of the Corporation represented .

5.8 Taking of Corporate Opportunities. – Where a Director or an Officer, by reason of his being a member of the Board or an Officer of the Corporation, acquires or receives for himself/herself a benefit or profit of whatever kind or nature, including but not limited to, the acquisition of shares in corporations where the Corporation an interest, the use of the properties of the Corporation for his/her own benefit, the receipt of commission(s) on contract(s) with the Corporation or its assets, or the taking advantage of corporate opportunities of the Corporation, all such profits or benefits shall be subject to restitution pursuant to Section 24 of R.A. 10149, without prejudice to any administrative, civil or criminal action against members of the Board or officers. The remedy of restitution shall apply notwithstanding the fact that such Director or Officer risked his/her own funds in the venture.

5.9 Restitution. – Pursuant to Section 24 of R.A. 10149, upon the determination and report of the Commission on Audit (COA) pursuant to a Notice of Disallowance which has become final and executory, that properties or monies belonging to the Corporation are in the possession of a Director or Officer of the Corporation without authority, or that profits are earned by the Director or Officer in violation of his/her fiduciary duty, or the aggregate per diems, allowances and incentives received in a particular year are in excess of the limits provided under R.A. 10149, the Director or Officer receiving such properties or monies shall immediately return the same to the Corporation.

Failure by a Director or Officer to make the restitution within thirty (30) days after a written demand has been served shall, after trial and final judgment, subject such Director or Officer to the punishment of imprisonment for one (1) year and a fine equivalent to twice the amount to be restituted and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

5.10 Limits to Compensation, Per Diems, Allowances and Incentives. -

Pursuant to Section 23 of R.A. 10149:

(a) The Charter or By-laws of the Corporation to the contrary notwithstanding, the compensation, per diems, allowances and incentives of the Appointive Directors shall be determined by the GCG, using as a reference, among others, Executive Order No. 24, dated February 10, 2011; and

(b) Directors shall not be entitled to retirement benefits acting as such directors.

5.11 **No Gift Policy.** – A Director or Officer shall not solicit, nor accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value (“Gift”) from any person where such Gift:

- (a) Would be illegal or in violation of law;
- (b) Is part of an attempt or agreement to do anything in return;
- (c) Has a value beyond what is normal and customary in the business of the Corporation;
- (d) Is being made to influence the member of Board’s, or Officer’s, actions as such;
or
- (e) Could create the appearance of a conflict of interest.

5.12 **Duty of Confidentiality.** – Pursuant to their duties of diligence and loyalty, a member of the Board or an Officer shall not use or divulge confidential or classified information officially made known to them by reason of their office and not made available to the public, either: (1) to further their private interests, or give undue advantage to anyone; or (2) which may prejudice the public interest.

VI. **DIRECTORS’ AND OFFICERS’ LIABILITY INSURANCE (DOLI) COVERAGE FOR PITC DIRECTORS AND OFFICERS**

6.1 An insurance coverage under the commercially accepted term “**Directors’ and Officers’ Liability Insurance**” (DOLI) is hereby provided to afford both the Corporation and the members of the PITC Boards of Directors and Officers the means to pursue their fiduciary duties and obligations “*to always act in the best interest of the GOCC, with utmost good faith in all [their] dealings with the property and monies of the GOCC.*”¹⁷

6.2 The recognition of the obligation of the Corporation, as well as its authority, to provide DOLI for the Board Directors and Officers has been expressed under Section 31 of the Code of Corporate Governance for GOCCs promulgated by the Governance Commission for GOCCs (GCG) as GCG Memorandum Circular No. 2012-07.

6.3 The Corporation, in providing for the DOLI for the Board Directors and Officers, shall be guided by the GCG Memorandum Circular No. 2012-10 (Re-Issued) for the coverage, reimbursement mechanism, expenses covered, allowable indemnification amounts, procedure for availment, booking of advances, etc.

VII. **DISCLOSURES**

As a dominant shareholder, the government is in many cases able to make decisions in general shareholders’ meetings without the agreement of any other shareholders. It is usually in a position to decide on the composition of the board of directors. While such decision making power is a legitimate right that follows with ownership, it is important that the government does not abuse its role as a dominant shareholder, for example, by pursuing objectives that are not in the interest of the Corporation and thereby to the detriment of other shareholders. Abuse can occur through inappropriate related party transactions, biased business decisions or changes in the capital structure favoring controlling shareholders. As such, the Corporation shall continue to enhance disclosure and transparency, and impose a

¹⁷ Sec. 19, R.A. No. 10149.

duty of loyalty from the Board members, as well as qualified majorities for certain shareholders' decisions, for the protection of other shareholders and the public in general.

Timely and accurate disclosure shall be made on all material matters regarding the Corporation, including its financial situation, performance, ownership and governance.

7.1 **Disclosure on Material Information.** The Corporation shall make a disclosure on, among others, the following material information:

a. **Corporate Objectives and Their Fulfillment.** When the government is the majority shareholder or effectively controls the Corporation, company objectives shall be made clear to all other investors, the market and the general public. The Corporation shall report on how it fulfills its objectives by disclosing key performance indicators. When the Corporation is also used for public policy objective, such as general services obligations, it should also report on how these are being achieved.

b. **Ownership and Voting Structure of the Corporation.** The Corporation shall clarify who retains legal ownership of the government shares as well as where the responsibility for exercising the government's ownership rights is located. Any special rights or agreements that may distort the ownership or control structure of the Corporation should be disclosed.

c. **Any Material Risk Factors and Measures Taken To Manage Such Risks.** The Corporation acknowledges the importance of disclosing of material risk factors. Without adequate reporting of material risk factors, the Corporation may give a false representation of their financial situation and overall performance. Appropriate disclosure by the Corporation of the nature and extent of risk incurred in their operations requires the establishment of sound internal risk management systems to identify, manage, control and report on risks. Public-Private partnerships shall also be adequately disclosed as such ventures are often characterized by transfers of risks, resources and rewards between public and private partners for the provision of public services or public infrastructure and may consequently induce new and specific material risks.

d. **Any Financial Assistance, Including Guarantees, Received From The Government and Commitments Made on Behalf of the Corporation.** To give a fair and complete picture of the Corporation's financial situation, the mutual obligations, financial assistance or risk sharing mechanisms between the government and the Corporation shall be appropriately disclosed. Disclosure should include details on any government grant or subsidy received by the Corporation, any guarantee granted by the government to the Corporation for its operations, as well as any commitment that the government undertakes on behalf of a Corporation.

e. **Any Material Transactions With Related Entities.** Transactions between the Corporation and related entities, such as an equity investment of one corporation in another shall be disclosed. Reporting on transactions with related entities shall provide all information that is necessary for assessing the fairness and appropriateness of these transactions.

The Corporation shall also disclose information on its financial and operating results; the remuneration policy for members of the Board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the Board; related party

transactions; issues regarding employees and other shareholders; and governance structures and policies and the process by which they are implemented.

7.2 Development of Internal Audit Procedures. The Corporation shall develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the Board and its Audit Committee.

7.3 Conduct of an Independent External Audit Based on International Standards. The Corporation shall undergo an annual independent external audit based on international standards. The Corporation is not necessarily required to be audited by external, independent auditors. This is because specific government audits provided by the Commission on Audit, which assigns resident auditors to the Corporation, are deemed sufficient to guarantee the quality and comprehensiveness of accounting information on the Corporation. However, these specific government audits are designed to monitor the use of public funds and budget resources, rather than the operations of the state-owned enterprise as a whole. Thus, to reinforce trust in the information provided, the government should require that, in addition to special government audits, at least all large government corporations should be subjected to external audits that are carried out in accordance with international standards.

7.4 Observance of the Highest Quality Accounting and Auditing Standards. The Corporation shall take all measures to be as transparent as publicly listed companies. It shall disclose financial and non-financial information according to high quality internationally recognized standards. A high level of disclosure is also valuable for the Corporation in pursuing important public policy objectives. It is particularly important when they have a significant impact on the National Budget, on the risks carried by the government, or when they have a more global societal impact.

VIII. STATEMENT OF MANAGEMENT RESPONSIBILITY FOR FINANCIAL STATEMENTS

The Management of the Corporation is responsible for all information and representation contained in its Financial Statements. The financial statements are prepared in conformity with generally accepted accounting principles and reflect amounts that are based on best estimates and informed judgment of management with appropriate consideration for materiality.

In this regard, Management maintains a system of accounting and reporting which provides for necessary internal controls to ensure that transactions are properly authorized and recorded, assets are safeguarded against unauthorized use or disposition and liabilities recognized.

IX. REVIEW AND AMENDMENT OF MANUAL

The provisions of this Manual and the enforcement thereof shall be subject to annual review unless otherwise stated by the Board.

This Manual is subject to review and amendment to take into account the Corporation's changing needs, factual conditions prevailing in the environment and regulatory requirements of the GCG and other Government Agencies.

X. ADOPTION AND EFFECTIVITY

This Manual was adopted by the Board of Directors of the Corporation on August 15, 2013¹⁸. It shall be effective upon approval by the Governance Commission for GOCCs.

So Approved.

¹⁸ Board Resolution No. 2013-08-004.