

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Quezon City

Fifteenth Congress
First Regular Session

House Bill No. 4041

Introduced by Honorable Neptali M. Gonzales II

EXPLANATORY NOTE

That government-owned or controlled corporations (GOCCs) play a significant role in the economic and social development of the country is a statement that could not be disputed. Operating within the sphere of their respective concerns and expertise, GOCCs contribute to the improvement of the government's financial position on account of being its fiduciary agents; they are able to map out development agenda that will prod improvements in infrastructure, technology, and even social service programs; and in partnership with private enterprises, they complement the move to spur the development of capital and commerce in the country.

In August 2010, however, GOCCs, as well as their role as fiduciary agents and instruments for social and economic development went through a period of careful scrutiny. At the time, the country was shocked by revelations that GOCCs operated with excess, if not reckless abandon, primarily through the granting of salaries, perquisites, and allowances to its executives that are excessive, if not of scandalous proportions to many. This occurred in instances where the financial position of certain GOCCs were tenuous, where allocations for the meeting of obligations exceeded the inflow of income, and where the prevailing economic conditions spelled misery to a hefty portion of the populace. The issue also brought into focus the manner by which appointees to governing bodies and management positions of GOCCs exercised their oversight and managerial functions, and whether such behavior speaks well of persons appointed to responsible positions.

The issue clearly points to the need to recast the mold upon which GOCCs are governed. There is a need to keep in tune with prevailing social and economic conditions and development the rationale for their continued existence, and determine which of these may be retained or dissolved. Their governing charters notwithstanding, the operations of GOCCs—or in a broader perspective, their governance—must be redefined in order to effect a more transparent, professional, and efficient corporate environment where accountability is at a premium. There is the need as well to evolve a more reasonable and justifiable remuneration scheme that hews closely to laws covering public sector remuneration. There is, too, the need to clearly define and delineate the regulatory and/or proprietary activities that each and every GOCC should be undertaking.

In consideration of the above, this bill seeks to promote financial viability and fiscal discipline in GOCCs, strengthen the role of the State in its governance, and to facilitate the evolution of a management and corporate culture that is accountable and responsive to public interests. Through this bill, it is the prayer that the role of GOCCs in the country's social and economic advancement will be reinforced.

In the light of the foregoing, immediate approval of this bill is earnestly sought.



NEPTALI M. GONZALES II

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AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN
GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND TO
STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND
MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF
PUBLIC INTEREST AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

General Provisions

SECTION 1. *Short Title.* – This Act shall be known as the “GOCC Governance Act of 2011.”

SECTION 2. *Declaration of Policy.* – The State recognizes the potential of Government-Owned or Controlled Corporations (GOCCs) as significant tools for economic development. It is thus the policy of the State to promote the growth of the GOCCs by ensuring that their operations are consistent with national development policies and programs.

Towards this end, the State shall ensure that:

- (a) The governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness;
- (b) A reporting system, which will require the periodic disclosure and examination of the operations and management of the GOCCs, their assets and finances, revenues and expenditures, is enforced;
- (c) The governing board of every GOCC is competent to carry out its functions, fully accountable to the State as its fiduciary, and acts in the best interest of the State;

- (d) Reasonable, justifiable and appropriate remuneration schemes are adopted for the officers and employees of GOCCs to prevent or deter the granting of unconscionable and excessive remuneration packages; and
- (e) There is a clear separation between the regulatory and proprietary activities of GOCCs, in order to achieve a level playing field with corporations in the private sector performing similar commercial activities for the public.

SECTION 3. *Definition of Terms.* –

- (a) “Affiliate” refers to a corporation fifty percent (50%) or less of the outstanding capital stock of which is owned or controlled, directly or indirectly, by the GOCC.
- (b) “Appointive 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; and
 - 2. In the case of Non-chartered GOCCs, members of its Board of Directors/Trustees whom the State is entitled to nominate, to the extent of its percentage shareholdings in such GOCC.
 - 3. In the case of subsidiaries and affiliates, members of its Board of Directors/Trustees whom the GOCC is entitled to nominate to the extent of its percentage shareholdings in such subsidiary or affiliate.
- (c) “Board of Directors/Trustees” or “Board” refers to the governing body that exercises the corporate powers of a GOCC.
- (d) “Charter Statement” refers to a statement of the GOCC’s vision, mission and core values.
- (e) “Chartered GOCC” refers to a GOCC, including Government Financial Institutions, created and vested with functions by a special law.
- (f) “Chief Executive Officer” refers to the President or the General Manager or the Administrator of a GOCC.
- (g) “Corporate Governance” refers to a set of principles and standards derived from law, regulation and proper corporate practices that enables the corporation to attract financial and human capital, perform efficiently, and generate long-term and desirable economic value for the State.

- (h) "Department" refers to an executive department created by law for the functional distribution of the work of the President.
- (i) "Fit and Proper Rule" refers to the standard for determining whether a member of the Board of Directors/Trustees or Chief Executive Officer is fit and proper to hold a position in a GOCC, which shall include but not be limited to, standards on integrity, experience, education, training, and competence.
- (j) "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.
- (k) "Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE)" refers to any instrumentality or agency of the government, which is neither a corporation nor an agency 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, including but not limited to the following: Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), Metropolitan Water and Sewerage Services (MWSS), Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, San Fernando Port Authority, Local Water Utilities Administration (LWUA), the Manila Economic and Cultural Office (MECO) and the Asian Productivity Organization (APO) .
- (l) "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 Act, the term "GOCC" shall include GICP/GCE as defined herein.
- (m) "Non-chartered GOCC" refers to a GOCC organized and operating under Batas Pambansa Bilang 68, or The Corporation Code of the Philippines.
- (n) "Officer" refers to the corporate officer entrusted to manage the day to day operations of

the GOCC as provided in its charter or by-laws, such as the Chief Executive Officer, President, Vice President, General Manager, Treasurer, and Corporate Secretary.

- (o) "Performance Scorecards" refers to a governance and management tool consisting of a set of measures, targets and initiatives that facilitate the achievement of breakthrough results and performance through the effective and efficient monitoring and coordination of the strategic objectives of the GOCC.
- (p) "President" refers to the President of the Republic of the Philippines.
- (q) "Related Corporation" refers to a subsidiary or affiliate of a GOCC.
- (r) "Secretary" refers to the person vested with the authority and responsibility for the exercise of the mandate of the Department, for the discharge of its powers and functions, and who shall have supervision and control of the Department.
- (s) "Strategy Map" refers to an integrated set of strategic choices or objectives drawn by the governing body, the successful execution of which results in the achievement of the GOCC's vision in relation to its mission or purpose for having been created.
- (t) "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.

SECTION 4. Coverage. – This Act shall be applicable to all GOCCs, including all GICPs/GCEs as defined herein, excluding the Bangko Sentral ng Pilipinas, which is a constitutionally-mandated independent agency, and the local water districts.

CHAPTER II

The Governance Commission for Government-Owned or Controlled Corporations ("GCG")

SECTION 5. Creation of the Governance Commission for Government-Owned or Controlled Corporations. – There is hereby created an advisory, monitoring, recommendatory, and policy-implementing body to be known as the Governance Commission for Government-Owned or Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. The GCG shall have the following powers and functions:

- a) Adopt within one hundred and eighty (180) days from its constitution, an ownership and operations manual governing GOCCs. Said manual shall be consistent with the Medium Term Philippine Development Plan and shall include:
1. Objectives of State ownership;
 2. Role of national government in the governance of GOCCs;
 3. Modes of implementation of the ownership policy;
 4. Guidelines on the monitoring of the operations of all GOCCs including their Related Corporations. These shall include Strategy Maps, Charter Statements, Performance Commitments and such other mechanisms;
 5. The roles, relationships and responsibilities of the State, the Government Agencies to which the GOCC is attached, and the GOCC;
 6. Disclosure and transparency requirements;
 7. Code of Ethics of Directors and Officers;
 8. Creation of board committees and similar oversight bodies;
 9. Integrated corporate reporting system;
 10. Statement of the social responsibilities of the GOCC; and
 11. Such other matters as the GCG may deem proper to include in the ownership policy.
- b) In addition to the qualifications required under the individual charter of the GOCCs, the GCG shall identify other necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors;
- c) Conduct periodic study, evaluation and assessment of the performance of the GOCCs, receive, and in appropriate cases, require reports on the operations and management of the GOCCs, including but not limited to the management of the assets and finances of the GOCCs;
- d) Evaluate the performance and determine the relevance of the GOCC, and recommend to the President the reorganization, merging, streamlining, abolition or privatization of a GOCC. For this purpose, the GCG shall be guided by the following:
1. The functions or purpose for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;
 2. The GOCC's functions or purpose duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;
 3. The GOCC is not producing the desired outcomes, or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or

not cost efficient and does not generate the level of social, physical and economic returns vis-à-vis the resource inputs; and

4. The GOCC is in fact dormant or non-operational for at least one (1) year.

Upon determination by the GCG that it is to the best interest of the State that a GOCC should be reorganized, merged, streamlined, abolished, or privatized, it shall make its recommendation to the President. The President may, upon confirmation of the findings of the GCG, order the reorganization, merging, streamlining, abolition or privatization of such GOCC.

The order for any such reorganization, merger, streamlining, abolition or privatization, as recommended by the GCG, must be issued by the President on or before June 30, 2015. Any such reorganization, merger, streamlining, abolition or privatization must be completed within ninety (90) days from the issuance by the President of the order to reorganize, merge, streamline, abolish or privatize.

- e) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;
- f) Provide technical advice and assistance to the Government Agencies to which the GOCCs are attached in setting performance objectives and targets for the GOCCs and in monitoring GOCCs performance vis-a-vis set objectives and targets;
- g) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs. It shall meet at least quarterly to:
 - 1) Review Strategy Maps and Performance Scorecards of all GOCCs;
 - 2) Review and assess existing performance-related policies including the compensation/remuneration of Board of Directors/Trustees and Officers and recommend appropriate revisions and actions; and
 - 3) Prepare performance reports of the GOCCs for submission to the President.
- h) Prepare a semi-annual progress report to be submitted to the President and the Congress. In its report, the GCG will provide its performance assessment of the GOCCs and recommend clear and specific actions. Within one hundred twenty (120) days from the close of the year, the GCG shall prepare an annual report on the performance of the GOCCs and submit it to the President and the Congress; and

- i) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President and to the Government Agency to which such GOCC is attached, a plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions.

SECTION 6. *Composition of the GCG.* – The GCG shall be composed of five (5) members with the Secretary of the Department of Budget and Management (DBM) as *ex officio* Chairman, and the Secretary of the Department of Finance (DOF) and the Director-General of the National Economic Development Authority (NEDA) as *ex officio* members, and two (2) representatives from the private sector as appointive members of the GCG.

The two (2) representatives from the private sector shall be appointed by the President, upon the joint recommendation of the DBM, DOF and the NEDA from a list of at least four (4) nominees. They must be citizens of the Philippines with recognized competence in the areas of corporate governance, policy administration, business management, human resources management, financial management and other related fields. They shall serve as GCG members for a term of three (3) years, without reappointment: *Provided*, That of the representatives from the private sector first appointed, one (1) shall serve for two (2) years, and one (1) shall serve for three (3) years, and thereafter every representative so appointed shall serve for three (3) years.

SECTION 7. *Remuneration of Members of the GCG.* – The members of the GCG shall not receive any compensation or remuneration for their services as such, except for members representing the private sector who may receive reasonable *per diems* for actual attendance in meetings of the GCG: *Provided*, That *per diems* payable to the members of the GCG shall be approved by the President.

SECTION 8. *The GCG Secretariat.* – The GCG shall maintain a full-time technical secretariat. Within ninety days (90) from the effectivity of this Act, the GCG shall present to the President the staffing requirement, organizational structure and budget requirements of the GCG Secretariat.

SECTION 9. *Managing Director.* – The management of the GCG Secretariat shall be vested in the Managing Director who shall be a citizen of the Philippines with known integrity, independence and recognized competence in the areas of corporate governance, policy administration, business management, human resources management and/or financial management and who has not been convicted of any act involving violation of The Corporation Code of the Philippines, The Securities Regulation Code (Republic Act No. 8799) or any other offense involving moral turpitude.

The Managing Director shall be appointed by the President from a list of at least five (5) nominees, upon the recommendation of the GCG.

The Managing Director shall have the rank of a Cabinet Undersecretary: *Provided*, That the Managing Director may receive such allowances and bonuses as determined by the GCG and approved by the President, giving due consideration to his overall performance and the performance of the GCG.

SECTION 10. *Powers and Duties of the Managing Director.* — The Managing Director shall have the following powers and duties:

- (a) Direct and manage the day-to-day affairs and business of the GCG Secretariat, subject to the control and supervision of the GCG;
- (b) Attend all meetings of the GCG and participate in its deliberations;
- (c) With the approval of the GCG, determine the staffing pattern and the number of personnel of the GCG Secretariat and define their powers and duties;
- (d) With the approval of the GCG, to appoint, remove, suspend, or otherwise discipline, for cause, any employee of the GCG Secretariat; and
- (e) Perform such other duties as may be delegated or assigned to him by the Chairman of the GCG from time to time.

CHAPTER III

Compensation and Position Classification System for GOCCs

SECTION 11. *Coverage of the Compensation and Position Classification System.* — The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.

SECTION 12. *Position Titles and Salary Grades.* - All positions in the Position Classification System, as determined by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.

The following principles shall govern the Compensation and Position Classification System:

- (a) All GOCC personnel shall be paid just and equitable wages in accordance with the principle of equal pay for work of equal value. Differences in pay shall be based on verifiable Compensation and Position Classification factors in due regard to the financial capability of the government.
- (b) Basic compensation for all personnel in the GOCC shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages. The total compensation provided for GOCC personnel shall be maintained at a reasonable level with due regard to the national budget.
- (c) A review of the GOCC compensation rates, taking into account the performance of the GOCC, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

No GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

SECTION 13. *Additional allowances and bonuses.* - The GCG may recommend, subject to the approval of the President, additional allowances or bonuses for certain position titles, giving due consideration to the necessity for such allowances and the good performance of the GOCC: *Provided*, That no bonuses or additional allowances shall be granted unless the GOCC has fully paid all taxes for which it is liable, and the GOCC has declared and paid all the dividends required to be paid under its charter or any other laws.

SECTION 14. *Non-diminution of salaries.* - The Compensation and Position Classification System to be developed and recommended by the GCG and as approved by the President shall apply to all positions, on full or part-time basis, now existing or hereafter created in the GOCC: *Provided*, That in no case shall there be any diminution in the salaries of incumbent employees of GOCCs, including those exempt under Republic Act No. 6758, as amended, upon the implementation of the Compensation and Position Classification System for GOCCs.

CHAPTER IV

Board of Directors/Trustees/Officers Of Government-Owned or Controlled Corporations

SECTION 15. *Coverage.* - The duties, obligations, responsibilities and standards of care provided under this Chapter shall be applicable to all members of the Board of Directors/Trustees and Officers of GOCCs now existing or hereafter created. These duties, obligations, responsibilities shall be in addition to the powers and functions provided in the individual charters or articles of incorporation and by-laws of their respective GOCCs.

SECTION 16. *Number of Directors/Trustees.* – The present number of Directors/Trustees provided in the charter of the GOCCs shall be maintained.

SECTION 17. *Ex officio alternates* – The *ex officio* members of the GOCC may designate their respective alternates who shall be the officials next in rank to them, and whose acts shall be considered the acts of their principals.

SECTION 18. *Appointment of the Board of Directors/Trustees of GOCCs.* – An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees: *Provided, However,* That all nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper test as defined under this Act and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC. No person who is not included in the shortlist prepared by the GCG may become an Appointive Director: *Provided,* That the GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the number of directors/trustees to be appointed: *Provided, Further,* That in the event that the President does not see fit to appoint any of the nominees included in the shortlist, he shall ask the GCG to submit additional nominees.

SECTION 19. *Fit and Proper.* – All members of the Board and the Chief Executive Officer shall be qualified by the “fit and proper” test to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.

To maintain the quality of management of the GOCCs, the GCG, in coordination with the relevant Government Agencies, shall, subject to the approval of the President, prescribe, pass upon and review the qualifications and disqualifications of individuals appointed as directors or elected Chief Executive Officer of the GOCC and shall disqualify those found unfit.

In determining whether an individual is fit and proper to hold the position of a director or Chief Executive Officer of the GOCC, due regard shall be given to his integrity, experience, education, training and competence.

SECTION 20. *Term of Office.* – The charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be one (1) year. An Appointive Director may be nominated by the GCG for re-appointment by the President only if he/she obtains a performance score of above average or its equivalent or higher in the

immediately preceding year of his/her tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC.

Appointment to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 18 of this Act.

Any provision of law to the contrary notwithstanding, all incumbent CEOs and members of the Board of GOCCs shall, upon approval of this Act, have a term of office until July 1, 2011 or until their successors shall have been appointed, or unless sooner replaced by the President.

SECTION 21. *The Chief Executive Officer of the GOCC.* – The Chief Executive Officer (CEO) or the highest-ranking officer provided in the charters of the GOCCs, shall be elected annually by the members of the Board from among its ranks, or from a shortlist of qualified candidates submitted by the GCG. The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.

SECTION 22. *Fiduciary Duties of the Board and Officers.* – As fiduciaries of the State, members of the Board of Directors/Trustees 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.

The members of the Board and Officers of GOCCs shall:

1. Act with utmost and undivided loyalty to the GOCC;
2. Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of the GOCC;
3. Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;
4. Apply sound business principles to ensure the financial soundness of the GOCC; and
5. Elect and/or employ only Officers who are fit and proper to hold such office with due regard to their qualifications, competence, experience, and integrity.

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 under Section 27 of this Act, without prejudice to any administrative, civil or criminal action against members of the Board of Directors/Trustees or Officers. This provision shall be

applicable notwithstanding the fact that such member of the Board or Officer risked his own funds in the venture.

SECTION 23. *Trustee Relation to the Properties, Interests and Monies of the GOCC.* – Except for the *per diem* received for actual attendance in board meetings and the reimbursement for actual and reasonable transportation expenses and bonuses within the limits authorized by the GCG, any and all realized profits and/or benefits, including, but not limited to the share in the profits, bonuses of members of the Board or Officers in excess of that authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where the GOCC is a stockholder or investor, and any benefit from the performance of members of the Board or Officers of the Corporation acting for and in behalf of the GOCC in dealing with its properties, investments in other corporations, management of subsidiaries and other interest, are to be held in trust by such member of the Board or Officer for the GOCC they represent.

SECTION 24. *Care, Diligence and Skill in the Conduct of the Business of the GOCC.* – The members of the Board and the Officers must exercise extraordinary diligence in the conduct of the business and in dealing with the properties of the GOCC. Such degree of diligence requires using the utmost diligence of very cautious person with due regard for all the circumstances.

SECTION 25. *Power of Board of Directors/Trustees to Discipline, Remove Officers of GOCC.* – Subject to existing civil service laws, rules and regulations, the Board shall have the authority to discipline the Chief Executive Officer, or order his removal from office, upon a majority vote of the members of the Board who actually took part in the investigation and deliberation.

SECTION 26. *Limits to Per Diems, Allowances and Bonuses.* – The charters of each of the GOCCs to the contrary notwithstanding, the members of the Board of Directors/Trustees of the GOCCs shall not receive any compensation nor be entitled to retirement benefits as such directors. Except for those who sit in the Board in their *ex officio* capacities, members of the Board shall, however, be entitled to reasonable *per diems*: *Provided*, That the same is authorized under the charter or the by-laws of the GOCC: *Provided, Further*, That such Directors/Trustees may be entitled to bonuses equivalent to not more than two (2) months salary of the CEO of the GOCC, based on their individual and the GOCC's performance: *Provided, Finally*, That any bonus in excess of this limit shall be subject to the approval of the President.

In case of GOCCs organized solely for the promotion of social welfare and the common good without regard to profit, the total yearly *per diems* and bonuses in the aggregate which the members of the Board of such GOCCs may receive shall be determined by the President based on the achievement by such GOCC of its performance targets.

SECTION 27. Restitution.— Upon the determination and report of the Commission on Audit (COA) that properties or monies belonging to the GOCC are in the possession of a member of the Board or Officer without authority, or that profits are earned by the member of the Board or Officer in violation of his/her fiduciary duty, or the aggregate *per diems*, allowances and bonuses received in a particular year are in excess of the limits provided under this Act, the member of the Board or Officer receiving such properties or monies shall return the same to the GOCC.

Failure to make the restitution, after a written demand has been served, shall be punished with an imprisonment of 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.

CHAPTER V

Creation of a new GOCC or Related Corporation

SECTION 28. Requisites for the Creation of a new GOCC or Related Corporation under The Corporation Code. – A Government Agency seeking to establish a GOCC or Related Corporation under The Corporation Code of the Philippines shall submit its proposal to the GCG for review and recommendation to the President for his approval before registering the same with the Securities and Exchange Commission (SEC). The SEC shall not register the articles of incorporation and by-laws of a proposed GOCC or Related Corporation, unless the application for registration is accompanied by an endorsement from the GCG stating that the President has approved the same.

CHAPTER VI

Miscellaneous Provisions

SECTION 29. Appropriations. – The amount of Ten Million Pesos (P10,000,000.00) for the initial operation of the GCG shall be sourced from the Contingent Fund of the President. Subsequent funding requirements shall be included in the annual General Appropriations Act.

SECTION 30. Suppletory Application of The Corporation Code and Charters of the GOCCs. – The provisions of The Corporation Code of the Philippines and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

SECTION 31. Repealing Clause. – The charters of the GOCCs under existing laws and all other laws, executive orders, administrative orders, rules, regulations, decrees, and other

issuances or parts thereof, which are inconsistent with the provisions of this Act, are hereby revoked, repealed or modified accordingly.

SECTION 32. *Separability Clause.* – Should any provision of this Act be declared unconstitutional, the same shall not affect the validity of the other provisions of this Act.

SECTION 33. *Effectivity.* – This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,