

TOURISM PROMOTIONS BOARD

Code of Corporate Governance

WHEREAS, pursuant to the State declared policy of treating Government Owned - or - Controlled Corporations (GOCCs) as significant tools for economic development, and the statutory-mandated obligation of the State to ensure that the governance of GOCCs is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness, under the governing boards which are competent to carry out their functions, fully accountable to the State as its fiduciaries and always acting for the best interests of the State, the **Tourism Promotions Board (TPB)**, a government instrumentality with corporate powers, in the exercise of its mandate under Republic Act No. 9593, otherwise known as the Tourism Act of 2009, approved the **TPB Code of Corporate Governance** ("Code") at the 3rd Floor, TPG Boardroom, DTI international Building, Jupiter St., 375 Sen. Gil Puyat Ave., Makati held on 23 July 2019 for its formal submission to the Governance Commission for GOCCs (GCG) and to the President of the Philippines for His Excellency's approval of what would constitute as an organic document for BOARD;

NOW, THEREFORE, the Board hereby formally promulgates and implements the Code as follows:

I.

DEFINITION OF TERMS

SECTION 1. *Definition of Terms.* - For purposes of this Code, the following terms shall have the following meanings:

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

"*Appointive Directors*" refer to all members of its Board of Directors who are not ex officio members thereof, and are also called representative directors in Republic Act No. 9593 or "The Tourism Act of 2009".¹

"Board" refers to the Tourism Promotions Board.

"*Board Officers*" refer to Officers whose primary task is to serve the Board or to pursue the immediate functions of the Board, such as the Chairman, Vice-Chairman and the Corporate Secretary.

"*Board of Directors*" or "Board" or "Governing Board" refers to the collegial body that exercises the corporate powers, conducts all business and controls or holds all properties of the TPB.

"*Charter*" refers to Republic Act No. 9593 or the "Tourism Act of 2009", a formal act of Congress creating the Tourism Promotions Board.

¹ Sec. 47 (g), Republic Act No. 9593

"Charter Statement" refers to a statement of the TPB's vision, mission and core values.

"Chief Operating Officer" ("COO") refers to the highest ranking corporate officer who heads Management as provided for in the Charter.²

"Code" refers to this instrument or the TPB Code of Corporate Governance.

"Confidential Information" refers to all non-public information entrusted to or obtained by a member of the Board or Officer by reason of his/her position as such with the Board. It includes, but is not limited to, non-public information that might be of use to competitors or harmful to the Board or its customers/stakeholders if disclosed, such as: (1) non-public information about the Board's financial condition, prospects or plans, its marketing and sales programs and research and development information, as well as information relating to mergers, acquisitions, divestitures, stock splits and similar transactions; (2) non-public information concerning possible transactions or ventures with other companies, or information about suppliers, joint venture partners, or any information that the Board is under obligation to keep confidential; and (3) non-public information about internal discussions, deliberations and decisions, between and among Directors and Officers.

"Director" refers to any member of the Board of Directors of TPB.

"Ex Officio Board Member" (*Ex Officio Director*) refers to any individual who sits or acts as a member of the Board of Directors by virtue of one's title to another office, and without further warrant or appointment.³

"Executive Officer" (*"Officer"*) refers to the COO or whoever is the highest-ranking officer in the TPB, and such other corporate officer of the GOCC as expressly provided for in its Charter.

"Extraordinary Diligence" refers to the measure of care and diligence that must be exercised by Directors and Officers in discharging their functions, in conducting the business and dealing with the properties and monies of the Board, which is deemed met when Directors and Officers act using the utmost diligence of a very cautious person taking into serious consideration all the prevailing circumstances and Material Facts, giving due regard to the legitimate interests of all affected Stakeholders.⁴

"Fit and Proper Rule" refers to a set of standards for determining whether a member of the Board of Directors or the COO is qualified to hold a position in the Board which shall include, but not be limited to, standards on integrity, experience, education, training and competence' as such standards are set forth under GCG Memorandum Circular No. 2012-05."⁵

² Sec. 47, Republic Act No. 9593

³ Sec. 47 (a-f), Republic Act No. 9593

⁴ Sec. 19, 21, Republic Act No. 10149

⁵ Sec. 3(j), Republic Act No. 10149

"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."⁶

"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. The term includes Government Instrumentalities with Corporate Powers ("GCP"), Government Corporate Entities ("GCE") and Government Financial Institutions ("GFI"). The term also includes a Subsidiary of a GOCC.⁷

"Management" refers to the body given the Board to implement the policies determined by the Board in directing the course and business activities of the GOCC.⁸

"Material Information" ("Material Fact") refers to information which a reasonable investor, stakeholder or Supervising Agency would consider important in determining whether: (1) to buy, sell, hold or otherwise transact with the securities issued by a GOCC; or (2) to the exercise with reasonable prudence voting rights related to securities held with such GOCC, or relating to corporate acts, contracts and transactions which would adversely affect the operations of the GOCC.⁹

"Officers" refer to both Board Officers and Executive Officers.¹⁰

"Per Diems" refer to the compensation granted to members of Board of Directors for actual attendance in meetings.¹¹

"Performance Evaluation System" ("PES") refers to the process of appraising the accomplishments of GOCCS in a given fiscal year based on set performance criteria, targets and weights.¹²

"Performance Scorecard" refers to a governance and management tool forming part of the performance evaluation system which consists 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.¹³

⁶ Sec. 3(k), Republic Act No. 10149

⁷ Sec. 3(o), Republic Act No. 10149

⁸ Adopted from Art. 1(d), SEC Revised Code of Corporate Governance (SEC Memorandum Circular 06, s. 2009)

⁹ Adopted from SRC Rule 3, Implementing Rules and Regulations to the Securities Regulation Code

¹⁰ Sec. 3(q), Republic Act No. 10149

¹¹ Sec. 3(s), Republic Act No. 10149

¹² Sec. 3(t), Republic Act No. 10149

¹³ Sec. 3(u), Republic Act No. 10149

"Public Officials" or "Public Officers" refer to elective and appointive officials and employees, whether permanent or temporary, whether in the career or non-career service, whether or not they receive compensation, regardless of amount," who are in the National Government, and all other instrumentalities, agencies or branches of the Republic of the Philippines, including government-owned-or-controlled corporations, and their subsidiaries.¹⁴

"Stakeholder" refers to any individual or entity for whose benefit the GOCC has been constituted, or whose life, occupation, business or well-being is directly affected, whether favorably or adversely, by the regular transactions, operations, or pursuit of the business or social enterprise for which the GOCC has been instituted, and which would include a stockholder, member, or other investor in the GOCC, management, employees, supply creditors, or the community in which the GOCC operates.

"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.¹⁵

"Supervising Agency" refers to a Government Agency to which a GOCC is attached to for purposes of policy and program coordination and for general supervision."¹⁶

SEC. 2. *Singular Term include the Plural.* - Unless otherwise indicated in this Code, any reference to a singular, shall apply as well to the plural, and vice versa.

SEC. 3. *Coverage.* - This Code shall be observed by TPB and all its officers and employees.

II.

ROLE OF TPB in NATIONAL DEVELOPMENT

SEC. 4. *The TPB as an Economic Tool for the State's Development.* - The State recognizes the potential of tourism as an indispensable element of the national economy, and as a means to promote growth by ensuring that the operations of the TPB are consistent with national development policies and programs.¹⁷

The Board is, therefore, mandated to ensure that:

- (a) Its operations are rationalized and properly monitored in order that its assets and resources are used efficiently and government exposure to all forms of liabilities and subsidies is warranted and incurred through prudent means;¹⁸

¹⁴ Sec. 3(b), Republic Act No. 6713

¹⁵ Sec. 3(y), Republic Act No. 10149

¹⁶ Adopted from Sec. 42, Chapter 9, Book IV, Revised Administrative Code of 1987 (E.O. 292)

¹⁷ Adopted from Sec. 2, Republic Act No. 9593

¹⁸ Sec. 2(b), Republic Act No. 10149

- (b) Its governance is carried out in a transparent, responsible and accountable manner and with utmost degree of professionalism and effectiveness; and¹⁹
- (c) The TPB Board of Directors are competent to carry out their functions, fully accountable to the State as its fiduciary, and always acting in the best interest of the State and its Stakeholders.²⁰

III.

BOARD OF DIRECTORS

SEC. 5. *Board of Directors Vested with Corporate Powers.* - Having been vested directly by law with the legal capacity to exercise all corporate powers, conduct all the business, and to hold all the properties of the Board, the Board of Directors is primarily responsible for the governance of the agency. Consequently, it is the Board and not the Management, that is primarily accountable to the State for the operations and performance of the Board.

SEC. 6. *Board Duty to Properly Select and Provide Independent Check on Management.* – Concomitant with the power to elect the Chief Operating Officer (COO) from among their ranks and to appoint other Officers of the TPB, it is the duty of the Board of Directors to ensure that they elect and/or employ only Officers who are fit and proper to hold such offices with due regard to their qualifications, competence, experience and integrity. The Board is therefore obliged to provide an independent check on the Management.²¹

SEC. 7. *Mandate and Responsibility for TPB's Performance.* – Although the day-to- day management of the affairs of the Board is with the Management, the Board of Directors is, however, responsible for providing policy directions, monitoring and overseeing the Managements actions, as articulated in the Charter, and other relevant legislation, rules and regulations. These mandated functions and responsibilities include the following:²²

- (a) Provide the corporate leadership of the Board subject to the rule of law, and the objectives set by the National Government through the GCG and other supervising agencies;
- (b) Establish the Board's vision and mission, strategic objectives, policies and procedures, as well as defining the Board's values and standards through:
 - Charter Statements;
 - Strategy Maps; and
 - Other control mechanism mandated by best business practices;
- (c) Determine important policies that bear on the character of the Board to foster its long-term success, ensure its long-term success, ensure its long-term viability and strength, and secure its sustained competitiveness;

¹⁹ Sec. 2(c), Republic Act No. 10149

²⁰ Sec. 2(e), Republic Act No. 10149

²¹ Adopted from Sec. 6(b.i.), SEC Code of Corporate Governance, Memorandum Circular No. 2, s. 2002

²² Sec. 7, GCG Memorandum Circular 2012-07

- (d) Determine the organizational structure of the Board, defining the duties and responsibilities of the Officers and employees and adopting a compensation

and benefit scheme that is consistent with the GOCC Compensation and Position Classification System (CPCS) developed by GCG and formally approved by the President of the Philippines;

- (e) Ensure that personnel selection and promotion shall be on the basis of merit and fitness and that all personnel action shall be in pursuit of the applicable laws, rules and regulations;
- (f) Provide sound written policies and strategic guidelines on the Board's operating budget and major capital expenditures, and prepare the annual and supplemental budgets of the Board;
- (g) Comply with all reportorial requirements, as required in the Charter, as well as applicable laws, rules and regulations;
- (h) Formally adopt and conduct annually the mandated Performance Evaluation System (PES) and the Performance Scorecard and timely and accurately report the results to the GCG; and
- (i) Ensure the fair and equitable treatment of all Stakeholders and enhancing the Board's relations with its Stakeholders.

SEC. 8. *Specific Functions of the Board of Directors.* – In addition to those specified in the Charter, the Board of Directors shall perform the following functions:²³

- (a) Meet regularly, ideally at least once every month, to properly discharge its responsibilities, with independent views expressed during such meetings being given due consideration, and that all such meetings shall be properly documented or minuted;
- (b) Determine the Board's purpose and value, as well as adopt strategies and policies, including risk management policies and programs, in order to ensure that the Board survives and thrives despite financial crises and that its assets and reputation are adequately protected;
- (c) Monitor and evaluate on a regular basis the implementation of corporate strategies and policies, business plans and operating budgets, as well as Management's over-all performance to ensure optimum results;
- (d) Adopt a competitive selection and promotion process, a professional development program, as well as a succession plan to ensure that the Officers of the TPB have the necessary motivation, integrity, competence and professionalism;
- (e) Monitor and manage potential conflicts of interest of Directors, Management, and shareholders, including misuse of corporate assets and abuse in related party transactions;

²³ Sec. 8, GCG Memorandum Circular 2012-07

- (f) Implement a system of internal checks and balances, which may be applied in the first instance to the Board; and ensure that such systems are reviewed and updated on a regular basis;

- (g) Ensure the integrity of the Board's accounting and financial reporting systems, including independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards;
- (h) Identify and monitor, and provide appropriate technology and systems for the identification and monitoring of key risks and performance areas;
- (i) Adopt, implement and oversee the process of disclosure and communications;
- (j) Constitute an Audit Committee and such other specialized committees as may be necessary, or required by applicable regulations, to assist the Board in discharging its functions; and
- (k) Conduct and maintain the affairs of the Board, as prescribed in its Charter and applicable laws, rules and regulations.

SEC. 9. *Composition of the Board of Directors.* - The composition of the Board of Directors shall be as provided for in the Charter.²⁴

SEC. 10. *Multiple Board Seats.* -The capacity of the appointive directors to serve with diligence shall not be compromised. As such, no appointive director may hold more than two (2) other Board seats in other GOCCs, subsidiaries and/or affiliates.²⁵

SEC. 11. *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 the their principals.²⁶

SEC. 12. *Appointment of Appointive Directors.* - The five (5) representative directors under the Charter shall be appointed by the President, from the shortlist prepared by the GCG consisting of nominees provided by Tourism Congress of the Philippines.²⁷ Pursuant to the Charter, the Tourism Congress shall recommend to the GCG at least three (3) nominees per group as enumerated in the Charter,²⁸ and to be endorsed to the GCG in accordance with the provisions of the Act. The selection and recommendation of prospective appointive directors shall be pursued in line with the criteria provided for in the Charter and the GCG rules.

²⁴ Sec. 47, Republic Act No. 9593

²⁵ Sec. 11, GCG Memorandum Circular 2012-07

²⁶ Sec. 14, Republic Act No. 10149

²⁷ Sec. 15, Republic Act No. 10149

²⁸ Sec. 47 (g), Republic Act No. 9593

An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors adopted for the GOCC.²⁹

SEC. 13. *Fit and Proper.* - All members of the Board of Directors, the COO and other Officers of the Board, shall be qualified by the Fit and Proper Rule adopted by the GCG in consultation and coordination with the relevant government agencies to which the Board is attached, and approved by the President, and shall include by reference the qualifications expressly provided for in the Charter.³⁰

SEC. 14. *Term of Office of Appointive Directors.* - Pursuant to Section 17 of the Act, any provision in the Charter to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause; Provided, however, that each Appointive Director shall continue to hold office until the successor is appointed and qualified.

Appointment to any vacancy shall only be for the unexpired term of the predecessor. The appointment of a Director to fill such vacancy shall be in accordance with the manner provided for regular appointment of Appointive Directors.³¹

SEC. 15. *Board Officers.* -The Board Officers are the Chairman of the Board (who is the highest ranking of the Board Officers), the Vice-Chairman, the Corporate Secretary, and the Compliance Officer, who must all be Filipino citizens.

15.1. *Chairman of the Board.* - The Chairman of the Board shall be the Secretary of the Department of Tourism. He shall, when present, preside at all meetings of the Board.

The Chairman's responsibilities shall include:

- (a) Calling meetings to enable the Board to perform its duties and responsibilities;
- (b) Approving the meeting agenda in consultation with the COO and the Corporate Secretary;
- (c) Exercising control over quality, quantity and timeliness of the flow of information between the Management and the Board; and
- (d) Ensuring compliance with the Board's guidelines on corporate governance.

The responsibilities set out above may pertain only to the Chairman's role in respect to the Board proceedings, and shall not be taken as a comprehensive list of all the duties and responsibilities of a Chairman.

²⁹ Sec. 14.2, GCG Memorandum Circular 2012-07

³⁰ Sec. 16, Republic Act No. 10149

³¹ Sec. 17, Republic Act No. 10149

15.2. *Vice-Chairman*. - In the absence of the Chairman of the Board, the Vice-Chairman, or the TPB COO, shall preside at the meetings of the Board.

15.3. *Corporate Secretary*. - The Corporate Secretary need not be a member of the Governing Board. Ideally, the Corporate Secretary must possess organizational and interpersonal skills, and the legal skills of a Chief Legal Officer. The Corporate Secretary shall have the following functions:

(a) Serve as an adviser to the Board Members on their responsibilities and obligations;

(b) Keep the minutes of meetings of the Board, the Executive Committee, and all other committees in a book or books kept for that purpose, and

furnish copies thereof to the Chairman, the COO and other members of the Board as appropriate;

(c) Keep in safe custody the seal of TPB and affix it to any instrument requiring the same;

(d) Attend to the giving and serving of notices of Board and shareholder meetings, if possible;

(e) Be fully informed and be part of the scheduling process of other activities of the Board;

(f) Receive instructions from the Chairman on the preparation of an annual schedule, the calling of Board meetings, the preparation of regular agenda for meetings, and notifying the Board of such agenda at every meeting;

(g) Oversee the adequate flow of information to the Board prior to meetings; and

(h) Ensure fulfillment of disclosure requirements to regulatory bodies.

15.4. *Compliance Officer*. - The Board shall appoint a Compliance Officer who shall report directly to the Chairman. In the absence of such office or appointment, the Corporate Secretary, who is preferably a lawyer, shall act as Compliance Officer.³² The Compliance Officer shall perform the following duties:³³

³² Adopted from Art. 3(F)(m), SEC Revised Code of Corporate Governance (SEC Memorandum Circular No. 6, s. 2009)

³³ Adopted from Art. 3(M), SEC Revised Code of Corporate Governance (SEC Memorandum Circular No. 6, s. 2009)

(a) Monitor compliance by the Board of the requirements under the Act, this Code, 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 this Code or other compliance issues; and
- (c) Issue a certification every 30 May of the year on the extent of the Board'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-a-vis the State, acting through the GCG, to ensure that the GOCC has complied with all its reportorial, monitoring and compliance obligations.

SEC. 16. Board Committees. - Board Committees and other oversight bodies may be created to enable the Directors to efficiently manage their time and ensure the proper understanding and resolution of all issues affecting the Board and the proper handling of all other concerns, and allows them to effectively utilize their respective expertise.

- 16.1. The Board of Directors shall therefore constitute the proper committees to assist them in performing their duties and responsibilities, providing each of the committees with written terms of reference defining the duties, authorities and the composition of the committees constituted. The committees shall report to the entire Board as a collegial body and the minutes of their meetings shall be circulated to all members of the Board. The existence of the committees shall not excuse the Board of Directors of its collective responsibility for all matters that are within the primary responsibility and accountability of the Board.
- 16.2. As a minimum, the Board shall be supported by the following specialized Committees:
 - 16.2.1. *Executive Committee*³⁴ - The Board of Directors may constitute an Executive Committee composed of not less than three (3) Members of the Board, with the Chairman of the Board being the Committee Chairman. The Executive Committee, in accordance with the Board 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 in accordance with the Charter, except with respect to:

³⁴ Sec. 16.2.1, GCG Memorandum Circular No. 2012-07

- (a) Filling of vacancies on the Board or in the Executive Committee;
- (b) Amendment or repeal of any resolution of the Board which by its express terms cannot be amended or subject to repeal; and
- (c) Exercise of powers delegated by the Board exclusively to other committees.

16.2.2. *Audit Committee*³⁵ - The Audit Committee shall consist of at least three (3) Directors, whose Chairman should have audit, accounting or finance background. The Committee shall be responsible for the following:

- (a) Overseeing, monitoring and evaluating the adequacy and effectiveness of the Board's internal control system, engage and provide oversight of the Board's internal and external auditors, and coordinate with the Commission on Audit (COA);
- (b) 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 with tax, legal, regulatory and COA requirements;
- (c) 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;
- (d) Ensuring that internal auditors have free and full access to all the Board'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
- (e) Developing a transparent financial management system that will ensure the integrity of internal control activities throughout the Board through a procedures and policies handbook that will be used by the entire agency.

³⁵ Sec. 16.2.2, GCG Memorandum Circular No. 2012-07

16.2.3. *Governance Committee*³⁶ - The Governance Committee shall assist the Board of Directors in fulfilling its corporate governance responsibilities. The Committee shall be composed of at least three (3) members of the Board, and chaired by the Chairman of the Board. The Committee shall be responsible for the following:

- (a) Overseeing the periodic performance evaluating of the Board and its committees and Management; and also conducting an annual self-evaluation of their performance;
- (b) 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;
- (c) 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
- (d) 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.

16.2.4. *Nomination and Remunerations Committee*³⁷ - The Nomination and Remunerations Committee shall consist of at least three (3) members of the Board. The Committee shall be responsible for the following:

- (a) Installing and maintaining a process to ensure that Officers to be nominated or appointed shall have the qualifications and none of the disqualifications mandated under the law, rules and regulations;
- (b) Reviewing and evaluating the qualifications of all persons nominated to positions in the Board which require appointment by the Board;
- (c) Recommending to the GCG nominees for the shortlist in line with the Board's and its subsidiaries' Board composition and succession plan; and

³⁶ Sec. 16.2.3, GCG Memorandum Circular 2012-07

³⁷ Sec. 16.2.4, GCG Memorandum Circular 2012-07

- (d) Developing recommendations the CPCS and ensuring that the same continues to be consistent with the Board's culture, strategy, control, environment, as well as the pertinent laws, rules and regulations.

16.2.5. *Risk Management Committee*³⁸ - 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 agency, and crisis management, which shall include receiving from Senior Management periodic information on risk exposures and risk management activities;
- (b) Developing the Risk Management Policy of the Board ensuring compliance with the same and ensure that the risk management process and compliance are embedded throughout the operations of the Board, 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.

16.3. *Combining the Mandatory Committees.* - Nothing herein shall preclude the Board of Directors from formally combining the functions of the committees into such combinations that will best serve the interest of the Board.

SEC. 17. *Annual Performance Evaluation.* -The Board shall periodically undertake an evaluation of its performance. The evaluation will encompass a review of the structure and operation of the Board to maximize its effectiveness.

IV.

MANAGEMENT

SEC. 18. *Role of Management.* - The Management of the Board shall ensure that all the corporate activities are designed effectively, and that the production of each individual worker will contribute to the attainment of the organizational goals.

Management shall also strive to encourage individual activity that will lead to reaching organizational goals and to discourage individual activity that will hinder the accomplishment of the organization objectives.

³⁸ Sec. 16.2.5, GCG Memorandum Circular 2012-07

SEC. 19. *Management Primarily Accountable to the Board.* -Management is primarily accountable to the Board for the operations of the Board. As part of its accountability, Management shall provide all members of the Board with a balanced and understandable account of the Board's performance, position and prospects on a monthly basis. This responsibility shall extend to interim and other price sensitive public reports and reports to regulators.

SEC. 20. *Chief Operating Officer (COO).* - The COO, or the highest-ranking Executive Officer provided for in the Charter, shall be elected annually by the members of the Board from among its ranks.³⁹ The COO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.

The Chief Operating Officer shall also:

- (a) Exercise general supervision and Board over the regular course of business, affairs, and property of the GOCC, and over its employees and officers;
- (b) See to it that all orders and resolutions of the Board are carried into effect;
- (c) 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 GOCC for the preceding year, and the state of its affairs;
- (d) Report to the Board from time to time all matters which the interest of the GOCC may require to be brought to its notice; and
- (e) Perform such other duties and responsibilities as the Board may impose upon him.

SEC. 21. *Other Executive Officers.* - Subject to the provisions of the Charter, the Board may also appoint other Executive Officers.

SEC. 22. *Power of the Governing Board to Discipline/Remove Officers.* - Subject to existing civil service laws, rules and regulations, and in ensuring compliance with the requirements of due process, the Board shall have the Board to discipline, or remove from office, the COO, or any other officer, upon a majority vote of the members of the Board who actually took part in the investigation and deliberation.⁴⁰

³⁹ Sec. 18, Republic Act No. 10149

⁴⁰ Sec. 22, Republic Act No. 10149

V.

DUTIES AND OBLIGATIONS OF DIRECTORS AND OFFICERS

SEC. 23. *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 Board, with utmost good faith in all dealings with the properties, interests and monies of the Board;⁴¹ and (b) they are constituted as trustees in relation to the properties, interests and monies of TPB.⁴²

SEC. 24. *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 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.⁴³

SEC. 25. *Respect 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 Board to faithfully and timely comply, with all legal provisions, rules and regulations, and corporate governance standards, applicable to them and to TPB, and to act within the bounds of the Charter.

SEC. 26. *Duty of Diligence.* -The fiduciary duty of diligence of Directors and Officers to always act in the best interest of TPB, with utmost good faith in all its dealings with the property and monies of the Board, shall include 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 Board, using the utmost diligence of a very cautious person with due regard to all the circumstances;⁴⁴
- (b) Apply sound business principles to ensure the financial soundness of the Board;⁴⁵ 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.⁴⁶

Every Director or Officer, by the act of accepting such position in the Board affirms and agrees: (1) to have a working knowledge of the statutory and regulatory requirements affecting the Board, including the contents of its Charter, 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 Board's interests and preserve its competitiveness.

⁴¹ Sec. 19, Republic Act No. 10149

⁴² Sec. 20, Republic Act No. 10149

⁴³ Sec. 2, Republic Act No. 6713

⁴⁴ Sec. 19(b), 21, Republic Act No. 10149

⁴⁵ Sec. 19(d), Republic Act No. 10149

⁴⁶ Sec. 19(e), Republic Act No. 10149

SEC. 27. *Duty of Loyalty.* - The fiduciary duty of loyalty of Directors and Officers to always act in the best interest of the Board, with utmost good faith in all its dealings with the property and monies of the Board, shall include the obligation to:

- (a) Act with utmost and undivided loyalty to the Board;⁴⁷
- (b) Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;⁴⁸ and
- (c) Avoid (1) taking for themselves opportunities related to the Board's business; (2) using the Board's property, information or position for personal gain; or (3) competing with the Board's business opportunities.

27.1. *Avoid Conflict of Interest.* - Directors and Officers shall at all times avoid any actual or potential conflict of interest with the Board. 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 Board 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.

27.2. *Trustee Relation to BOARD 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 Board is a stockholder or investor, and any benefit from the performance of Directors or Officers acting for and in behalf of the Board 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 Board.⁴⁹

27.3. *Taking of Corporate Opportunities.* - Where a Director or an Officer, by reason of his being a member of the Board or an Officer, 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 Board has an interest, the use the properties of the Board for his/her own benefit, the receipt of commission(s) on contract(s) with the Board or its assets, or the taking advantage of corporate opportunities of the same, all such profits or benefits shall be subject to restitution pursuant to Section 24 of the Act, without prejudice to any administrative, civil or criminal action against members of the such Director or Officer. The remedy of restitution shall apply notwithstanding the fact that such Director or Officer risked his/her own funds in the venture.⁵⁰

⁴⁷ Sec. 19(a), Republic Act No. 10149

⁴⁸ Sec. 19(c), Republic Act No. 10149

⁴⁹ Sec. 20, Republic Act No. 10149

⁵⁰ Sec. 19, Republic Act No. 10149

27.4. *Restitution.* - Pursuant to Section 24 of the Act, 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 Board are in the possession of a Director or Officer without Board, 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 the Act, the Director or Officer receiving such properties or monies shall immediately return the same to the Board.⁵¹

SEC. 28. *Limits to Compensation, Per Diems, Allowances and Incentives.* - Pursuant to Section 23 of the Act:

- (a) The Charter, 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;
- (b) Directors shall not be entitled to retirement benefits acting as such directors; and

SEC. 29. *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 Board's business;
- (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.

The Board of Directors shall formally adopt a "No Gift Policy" within the Board and ensure its full advertisement to the community and its strict implementation by particular set of rules.

SEC. 30. *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.

⁵¹ Sec. 24, Republic Act No. 10149

VI.

OBLIGATIONS OF THE TPB TO DIRECTORS AND OFFICERS

SEC. 31. *Providing for Staff Support to Directors.* - The Board shall provide the Board of Directors with reasonable support staff and office facilities to allow them to properly discharge their duties and responsibilities.

SEC. 32. *Obtaining of Directors and Officers Liability Insurance (DOLI).* - The Board shall obtain a "Directors and Officers Liability Insurance" (DOLI) coverage for itself and the members of the Board of Directors and Officers against contingent claims and liabilities that may arise from, as well as the expenses that may be incurred in prosecuting, the actions that may be filed against the Board arising from the actions of the Board and/or Management that may cause loss or damage to third parties.

32.1 *Directors and Officers Allowed DOLI Coverage:* Ex Officio Director, Alternates of Ex Officio Director, Appointive Directors and Officers shall be afforded DOLI coverage by the TPB.⁵² Only the following employees of the GOCC shall fall within the term "Officer" to be entitled to DOLI coverage:⁵³

(a) "Board Officers"

(b) "Executive Officers"

(c) "Frontline Employees" refers to employees of the GOCC who fall below the equivalent rank of a Director (SG 25) but who are assigned by the Management to undertake frontline services that exposes them to suit and other claims in pursuing the mandates of the GOCC;⁵⁴ and

(d) Members of the Bids and Awards Committee (BAC) pursuant to the "Government Procurement Reform act" (Republic Act No. 9184), similar committees under the BOT Law and the Revised NEDA JV Guidelines, and Asset Disposal Committees.⁵⁵

Every erring Director or Officer must be held personally to account for and therefore cannot be insulated from the effects of his malfeasance and misfeasance through a DOLI coverage.⁵⁶ Nothing in this section shall be construed as to authorize the reimbursement or the incurring of costs, such as the payment of premiums on DOLI coverage, by the Board on the litigation expenses incurred and the judgment liability decreed against a Director or Officer for breach of any of his fiduciary duties or for fraud committed in the performance of his or her duties to the Board and/or its stakeholders.

TPB therefore cannot, through the DOLI coverage, lawfully provide or indemnity rights to its Directors and Officers for illegal, dishonest, fraudulent or any other acts which constitute a breach of their fiduciary duties.⁵⁷

⁵² Sec. 7.1, GCG Memorandum Circular 2012-10 (3rd Issue)

⁵³ Sec. 7.2, GCG Memorandum Circular 2012-10 (3rd Issue)

⁵⁴ Sec. 7.2 (c), GCG Memorandum Circular 2012-10 (3rd Issue)

⁵⁵ Sec. 7.2 (d), GCG Memorandum Circular 2012-10 (3rd Issue)

⁵⁶ Sec. 9, GCG Memorandum Circular 2012-10 (3rd Issue)

⁵⁷ Sec. 9.3, GCG Memorandum Circular 2012-10 (3rd Issue)

VII.

CSR AND RELATIONS WITH STAKEHOLDERS

SEC. 33. *Duty to Be Responsive to Stakeholders.* - Every Director and Officer accepts the position fully aware that he assumes certain responsibilities not only to the Board, but also with different constituencies or stakeholders, who have the right to expect that the Board is being run in a prudent manner and with due regard to the interests of all Stakeholders.⁵⁸ Consequently, members of the Board and Officers shall deal fairly with the Board's employees, customers, suppliers and other Stakeholders. No member of the Board or Officer may take unfair advantage of the Board's employees, customers, suppliers and other Stakeholders through manipulation, concealment, abuse of confidential or privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

SEC. 34. *CSR Principles.* - The Board of Directors shall recognize and perform the obligations the Board has towards the National Government, its majority stockholder, as well as the minority stockholders when existing, together with the employees, suppliers, customers, and other Stakeholders, and the communities where the Board operates.

The Directors, Officers and all its employees are required to abide by ethical policies as mandated by the GCG. Hence, Directors, Officers and employees should be aware of the disciplinary implications of breaches of policy.

The Board shall have an environment that enables its people to raise genuine and legitimate concerns internally. Every member of the Board is encouraged to promptly report any potentially illegal, improper and/or unethical conduct that they become aware of at their workplace or in connection with their work. However, in the event that the people, and/or the stockholders believe their reporting to management may result in harassment, or undue distress, they may contact the GCG support to report such matters.

SEC. 35. *Formal Recognition of the Stakeholders.* - The Board of Directors shall, as an integral part of its Charter Statement and embodied in its Manual of Corporate Governance, identify and formally recognize the Board's major and other Stakeholders, identify the nature of their interests, provide a hierarchy system of their conflicting interest in the Board, and providing a clear policy on communicating or relating with Stakeholders accurately, effectively and sufficiently, together with a system of properly rendering an accounting on how the Board has served their legitimate interests.⁵⁹

SEC. 36. *Employees.* - Every employee in the Board is encouraged to –

- (a) Remember that the biggest stakeholder is the Government;
- (b) Share the vision of the agency;
- (c) Be accountable to the public;

⁵⁸ Sec. II (6)(a), SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002

⁵⁹ Sec. II (2)(b)(iv), SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002

- (d) Listen and learn from his/her co-employees;
- (e) Think and act as a team;
- (f) Focus on the customers and strive for customer satisfaction;
- (g) Respect others;
- (h) Communicate with stockholders and customers;
- (i) Deliver results and celebrate success; and
- (j) Protect the reputation of the agency.

The Board shall conduct employee development discussions and structured training programs for continuing personal and professional development for employees.

SEC. 37. *Customers.* - The Board shall operate a highly effective and efficient organization, focused on meeting customer objectives with the aim of providing services which give fair value and consistent quality, reliability and safety in return for the price paid for the same. It shall operate policies of continuous improvement, of

both processes and the skills of the staff, to take best advantage of advances in all aspect of society in order to ensure that it continues to add value to its customers' businesses.

SEC. 38. *Suppliers.* - The Board shall aim to develop relationships and improve networking with business partners and suppliers based on mutual trust. GOCCS should aim to offer, through partnership with its suppliers, the best combination of state-of-the art technology and world class service, strong customer relations and deep industry knowledge and experience, together with the capacity to implement and deliver value-added solutions on time and within budget.

SEC. 39. *Health and Safety.* - The Board shall aim to ensure a safe and healthy working environment for all its employees, outside contractors and visitors. The Board should comply with all relevant local legislation or regulations, and best practice guidelines recommended by national health and safety authorities. The staff should be informed regarding the policies and practices of the Board in order to maintain a healthy, safe and enjoyable environment.

SEC. 40. *Environment.* - It shall be the goal of the Board to minimize harmful effects and consider the development and implementation of environmental standards to achieve this to be of great importance. As such, the Board shall strongly encourage 3 R's: "Reduce", "Reuse", and "Recycle".

In the course of the operations, the Board shall identify opportunities to reduce consumption of energy, water and other natural resources. It shall also strive to re-use and recycle where possible and dispose of non-recyclable items responsibly, thereby minimizing our impact on the environment.

VIII.

DISCLOSURE AND TRANSPARENCY REQUIREMENTS

SEC. 41. *Transparency.* - To uphold the essence of corporate governance, it shall be imperative for the Board of Directors and the Management to disclose all material information to the National Government and the public, its ultimate stakeholder, in a timely and accurate manner at all times.

SEC. 42. *TPB's Manual of Corporate Governance.* - The Board, acting through its Board of Directors, shall promulgate and adopt its corporate governance rules and principles in accordance with this Code, and which in addition shall contain the following items:

- (a) Detailed responsibilities of members of the Board, which shall be available to all Stakeholders and to the public;
- (b) Formal Charter of expectations that each Director shall sign and be committed to;
- (c) List of Disclosures to be made by Directors;
- (d) Statement by the Directors confirming the truth and fairness of the Board's financial statements similar to a Statement of Management Responsibility; and
- (e) List of Fines and other consequences when Directors violate, or omit to carry out their duties, under applicable law.

The Manual shall be submitted to the GCG, which shall evaluate the same and their compliance with this Code taking into account the classification and industry of the Board. The Manual shall be available for inspection by any of the identified Stakeholders of the TPB at reasonable hours on business days.

SEC. 43. *Website.* - In accordance with Section 25 of the Act, it shall be mandatory for the BOARD to maintain a website and post therein for unrestricted access:

- (a) Institutional Matters;
- (b) Information on the Board of Directors and Officers;
- (c) Financial and Operational Matters;
- (d) Governance Matters; and
- (e) Such other information or report that the GCG may require.

SEC. 44. *TPB as an Active Participant in the Integrated Corporate Reporting System.* - The Board, acting through its Board and Management, shall ensure that it becomes an active and responsible member and contributor to the Integrated Corporate Reporting System (ICRS), which shall be developed by the National Government, through the GCG.

SEC. 45. *Mandatory Reports.* - The Board shall regularly submit, as may be required by the GCG and other Government Agencies, the following:

- (a) Performance Scorecards;
- (b) Implementation of the audit recommendations of COA; and
- (c) Compliance with commitments on servicing loans to, and borrowings guaranteed by, the National Government.

SEC. 46. *Other Reportorial Requirements.* - The Board shall also submit to the GCG periodically in electronic form to the GCG the following:

- (a) Common Form financial statements based on annual audited financial statements within thirty (30) days from receipt of the report;
- (b) Cash and investment balances;
- (c) Capital expenditure program;
- (d) Statement of Financial Operations;
- (e) Acquisition or disposition of assets;
- (f) Off Balance Sheet transactions; and
- (g) Reports for the annual corporate budget call such as, but not limited to, the following:
 - (1) Physical and Financial Performance reports (the immediately preceding three (3) years); and
 - (2) Sources and Uses of Funds (the immediately preceding three (3) years) and the proposal for the coming year.

IX.

HIGHEST STANDARDS PRINCIPLE

SEC. 47. Public service being a public trust, nothing in this Code shall be construed as:

- 47.1. *Corporate Government Standards:* Relieving or excusing the Board, its Directors and Officers, from complying with more rigorous standards of corporate governance as those required by regulatory agencies having jurisdiction over their business enterprises or the industry in which they operate.

- 47.2. *Reportorial Requirements:* A waiver of the separate reportorial requirements mandated by the regulatory agencies that have jurisdiction over the BOARD and its business operations.
- 47.3. *Administrative and Criminal Liabilities:* A waiver of the administrative or criminal liabilities imposed by existing laws, rules and regulations, such as the Anti-Graft and Corrupt Practices Act, and the Code of Conduct and Ethical Standards for Public Officials and Employees for Government Officials, for offenses or breach of ethical standards committed by Directors, Officers and employees of GOCCs.

X.

MISCELLANEOUS PROVISIONS

SEC. 48. *Amendments.* - This Code may be amended by the Board, through the issuance of a memorandum circular duly published and approved by the GCG and a copy formally submitted to the UP Law Center.

SEC. 49. *Effectivity.* - This Code shall be effective fifteen (15) days after it is published in the Board's website and from the date formal copy is received by the UP Law Center.

ADOPTED this 23 day of July, 2019.