

MANUAL OF CORPORATE GOVERNANCE

It is the policy of the Bases Conversion and Development Authority (BCDA) to actively promote and pursue corporate governance reforms and to consciously observe principles of accountability and transparency with the utmost degree of professionalism and effectiveness. The Board of Directors of BCDA hereby adopts this Manual of Corporate Governance to steer the corporate organization toward excellence and competitiveness, locally and globally, thus enabling it to be a valuable partner of the government in national development.

I. DEFINITION AND INTERPRETATION

- 1.1. *Definition of Terms.* Unless otherwise provided elsewhere in this Manual, the following terms shall mean as follows:
 - 1.1.1. *Ad Hoc Board Committees* – Board Committees created to address particular issues which may include operational matters. Ad Hoc Committees are temporary in nature and dissolved after they have served the purpose specified for their creation. Membership to Ad Hoc Committee may include representatives of Management.
 - 1.1.2. *Affiliate* – A corporation of which fifty percent (50%) or less of the outstanding capital stock is owned by BCDA.
 - 1.1.3. *Board of Directors* – The collegial body that exercises the corporate powers of BCDA, as specified in Republic Act No. 7227 (RA 7227). It is charged with the functions of governing and conducting the business of BCDA and monitoring Management.
 - 1.1.4. *Charter* – RA 7227, also known as the “Bases Conversion and Development Act of 1992”, as amended.
 - 1.1.5. *Code of Corporate Governance or Code* – Code of Corporate Governance for GOCCs promulgated by the Governance Commission for Government Owned or Controlled Corporations (GCG) under GCG Memorandum Circular No. 2012-07 and Approved by the President of the Philippines on 28 November 2012.
 - 1.1.6. *Corporate Governance* – The framework of rules, systems and processes in the corporation that governs the performance by the Board of Directors and Management of their respective duties to the State and the stakeholders. It provides the structure through which the objectives of a corporation are set, and the means of achieving those objectives and monitoring performance are determined.
 - 1.1.7. *Executive Board Member* – A Member of the Board who is at the same time appointed to head a group/department/unit within

BCDA or performs any work related to its operation.

- 1.1.8. *Independent Board Member* – A Member of the Board who has no relationship with BCDA, its affiliates, subsidiaries or joint ventures that could interfere, or be reasonably perceived to interfere, with the exercise of his/her independent judgment in carrying out the responsibilities as a Member of the Board.
 - 1.1.9. *Internal Auditing* – An independent, objective assurance and consulting activity designed to add value and improve BCDA's operations. It helps BCDA accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.
 - 1.1.10. *Internal Control* – The system established by the Board and Management for the accomplishment of BCDA's objectives, the effective and efficient operation of its business, the reliability of financial reporting and faithful compliance with applicable laws, regulations, and internal policies.
 - 1.1.11. *Management* – The body given the authority by the Board to implement the policies it has laid down in the conduct of business of BCDA.
 - 1.1.12. *Oversight Director* – A Board committee or a particular member of the Board tapped by the Board to oversee a specific project or function, providing consultancy-type advice and service, analyze information and recommend actions for Board approval.
 - 1.1.13. *Regular Board Committees* – Permanent Board Committees that perform the policy making and governance functions of the Board that are delegated to them. Membership in Regular Committees shall be exclusively for Board Members.
 - 1.1.14. *Specialized Board Committees* – Committees created to support the Board in the performance of its functions. Specialized Board committees should have written terms of reference that define their duties, authority, composition, reporting relationships and conduct of business.
 - 1.1.15. *Stakeholders* – Beneficiaries of BCDA programs identified under RA 7227, as amended, allied laws and executive issuances and investors providing external capital to BCDA in the form of equity or credit.
 - 1.1.16. *Subsidiary* – A corporation of which more than 50% of the voting stock is owned or controlled, directly or indirectly through one or more intermediaries, by BCDA.
- 1.2. *Interpretation of Salient Provisions.* All doubts or questions that may

arise in the interpretation or application of this Manual shall be resolved in favor of promoting transparency, accountability and fairness to the State and stakeholders of BCDA.

II.

COMMITMENT TO PRINCIPLES OF GOOD CORPORATE GOVERNANCE

- 2.1. *BCDA as an Active Partner of the Government in National Development.* BCDA shall perform its functions as an active partner of the government in national development. Such functions include the delivery of public services, as well as the production and creation of wealth necessary to support vital government initiatives.
- 2.2. *Governing Principles of Good Corporate Governance of BCDA.* The corporate governance framework for BCDA shall be governed by the following principles:
 - 2.2.1. BCDA shall conduct its business strictly in accordance with the rule of law and shall be supportive of the primary goals and objectives of the State.
 - 2.2.2. Timely and accurate disclosure shall be made for transparency on all material aspects and development regarding BCDA, including its financial condition, performance, ownership, and governance.
 - 2.2.3. The strategic guidance of BCDA 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 State.
 - 2.2.4. BCDA shall adhere to the highest degree of ethical standards and promote accountability and fairness in all its business transactions.
 - 2.2.5. The long-term growth, development and strength of BCDA shall be fostered.
 - 2.2.6. Active cooperation between BCDA, its affiliates, subsidiaries and stakeholders in creating wealth, jobs, and the sustainability of a financially sound enterprise shall be encouraged.
- 2.3. *Corporate Social Responsibility (CSR) of BCDA.* BCDA recognizes its CSR for the common good of society.
 - 2.3.1. *BCDA CSR Philosophy.* BCDA is committed to fulfill its mandates to its stakeholders by improving the quality of life of and giving dignity to the workforce, their families, and the communities that it develops through the conversion of former military bases and other properties into premier sustainable centers of economic growth.

2.3.2 *Major Targets.* BCDA identifies five (5) major targets for its CSR projects namely: the Armed Forces of the Philippines (AFP), project-affected communities, internal organization, the environment, and victims of natural calamities.

2.3.3 *Implementation of the CSR Projects:*

1. BCDA shall identify the CSR projects for the year, in line with BCDA's CSR Philosophy.
2. The total budget for the CSR projects shall be included in the Corporate Operating Budget, which shall be submitted to the Board for approval.
3. The initiating department shall ensure that the CSR projects are included in their department plans and budget.
4. The designated initiating departments to implement the CSR projects are as follows: i) if the CSR target is the AFP, the initiating department would be the Public Affairs Department; ii) for the Project-Affected Communities, it would be the Project Management Department; iii) for BCDA employees, it would be the Organizational Development and Management Department; iv) for Environmental CSR, it would either be the Special Projects Project Management Office (PMO), the SCTEX PMO, or the Clark Green City PMO, as the case may be; and v) for the victims of natural calamities, the initiating department would be the Organizational Development and Management Department.
5. To sustain its interventions, BCDA will establish linkages with the concerned stakeholders in the implementation of its CSR projects.
6. The initiating departments will submit its Accomplishment Reports to the BCDA President and Chief Executive Officer.

2.4 *Commitment to Institutionalize the Principles of Corporate Governance.* BCDA is committed to institutionalize the principles of good corporate governance in the entire organization. The Board of Directors, Management and Employees of BCDA equally commit to the principles contained in the Code of Corporate Governance for GOCCs and acknowledge that this Manual will serve as guide in the achievement of corporate goals.

2.5 *Care, Diligence and Skill in the Conduct of the Business of the BCDA.* The members of the Board and the Officers must exercise extraordinary diligence in the conduct of business and in dealing with the properties of BCDA. Such degree of diligence requires using the utmost diligence of very cautious person with due regard for all circumstances.¹

2.6 *Promotion of Corporate Governance.* The Board of Directors, Management and Employees believe that good corporate governance is an integral component of sound strategic business management and of transparency and accountability in public corporate governance, and will undertake

¹ Sec. 21, R.A. 10149.

every effort necessary to create awareness of such within BCDA.

2.7 *Governance Policy on Conflict of Interest*

Public policy dictates that the personal interest of board members and officers should never prevail over the interest of BCDA. As such, Board Members and officers may not directly or indirectly derive any personal profit or advantage by reason of their position in the corporation.

2.7.1. *Determination of conflict of interest.* A conflict of interest exists when a Board Member or officer of BCDA:

2.7.1.1. Supplies or is attempting or applying to supply goods or services to the BCDA Group;

2.7.1.2. Supplies or is attempting to supply goods, services or information to an entity in competition with the BCDA Group;

2.7.1.3. By virtue of his office, acquire or is attempting to acquire for himself a business opportunity which should belong to the BCDA Group;

2.7.1.4. Is offered or receive consideration for delivering BCDA Group's business to a third party; and

2.7.1.5. Is engaged or is attempting to engage in a business or activity which competes with or works contrary to the best interests of the BCDA Group.

2.7.2. *Disclosure of Conflict of Interest.* If an actual or potential conflict of interest should arise on the part of board members, it should be fully disclosed and the concerned Board Member should not participate in the decision-making. A Board Member who has a continuing conflict of interest of a material nature should either resign or, if the Board deems appropriate, be removed from the Board.

2.7.3. *Voidable Contracts.* A contract of BCDA with one or more of its Board Members or officers is voidable, at the option of BCDA, unless all the following conditions are present:

2.7.3.1. The presence of such director in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;

2.7.3.2. The vote of such director was not necessary for the approval of the contract;

2.7.3.3. The contract is fair and reasonable under the circumstances; and

2.7.3.4. In case of an officer, the contract has been previously approved by the Board.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a board member, such contract may be ratified by the Board in a meeting called for that purpose; provided, that full disclosure of the adverse interest of the board member involved is made at such meeting; and provided, further, that the contract is fair and reasonable under the circumstances.

2.7.4. *Liability of Board Members.* Where a Board Member, by virtue of his/her office, acquires a business opportunity which should belong to BCDA, thereby obtaining profits to the prejudice of the corporation, the Board Member must account to the latter for all such profits by refunding the same, unless his/her act has been ratified. This provision shall be applicable notwithstanding the fact that the board member risked his own funds in the venture. The foregoing is without prejudice to BCDA's Rules or Code of Conduct and Ethics for its officers, employees and staff.

2.8 *No Gift Policy*

BCDA shall adhere to the highest form of ethical standards. The BCDA Board of Directors, Officers, Managers and employees shall demonstrate fairness, professionalism and deliver quality services without expectations of any undue favor or reward.

BCDA shall comply with the provisions of its No Gift Policy as part of its Corporate Governance, a copy of which is attached hereto as "Annex A" and made an integral part hereof.

2.9 *Relations with Stakeholders*

BCDA recognizes the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between BCDA and its stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

The following are the BCDA's Stakeholders/Beneficiaries, in order of priority with respect to their nature of interests in BCDA, and how they are affected by BCDA's mandate:

1. Office of the President/National Government

- Economic, Social and Financial Gains. BCDA's fulfillment of its main mandate, along with the development of the economic zones and implementation of infrastructure projects, allows the government to gain economic and social benefits from it. Dividends

are remitted by BCDA to the Bureau of National Treasury to fund various government programs and improve government services.

BCDA remits its dividends to the BTr during the annual GOCC Dividends' Day. The amount represents the National Government's dividends share and the share of government beneficiary agencies from BCDA's asset disposition proceeds.

BCDA also presents its infrastructure projects and programs for OP approval and implementation to concerned government entities such as the National Economic and Development Authority (NEDA) Board Committee on Infrastructure (Infracom) and/or its committees.

2. Congress

- Legislative Initiative and Policy Oversight. BCDA pursues initiatives for recommendation to Congress as part of their legislative agenda.

BCDA ensures its attendance to Congressional hearings concerning BCDA-related projects and programs. It also actively participates in discussions during meetings convened by the House Committee on Bases Conversion which takes on matters directly and principally relating to policies and programs relating to bases conversion, the operation of special economic zones in former military bases, sale of military camps and disposition of proceeds thereof, relocation of military camps and personnel, and the construction of new military camps.³

3. Armed Forces of the Philippines (AFP)

- Conversion into commercial uses of the former military baselands and their extensions. BCDA shall remit to the AFP modernization fund the share of the proceeds from the sale of Metro Manila camps. Likewise, proceeds of leases, joint ventures and all transactions other than sale entered into by BCDA involving portions of Metro Manila camps shall be distributed equally between BCDA and the AFP.

BCDA takes a proactive approach in dealing with the AFP, particularly where remittance and accounting of AFP disposition proceeds are concerned. Institutional mechanisms are in place to foster smooth communication with the AFP and these include consultations and dialogues among BCDA-Senior DND/AFP Leaders/Officials, attendance to Joint DND/AFP-BCDA Technical Working Groups regarding military replication projects; membership to the Philippine Multi-Sector Advisory Board (MASB) composed of representatives from key sectors of society which aims to help the Philippine Army pursue its transformation initiatives; conduct of the AFP Regional Forum as part of BCDA's Stakeholder

³ Republic of the Philippines, House of Representatives 16th Congress, House Committees' Jurisdiction

Relations Program; and formal issuances of notices/copies to concerned parties on the regular remittances by BCDA to Bureau of Treasury.

- Development of AFP-owned Military Camps with BCDA as Corporate Arm of the AFP. Pursuant to Section 11 of Republic Act 10349 or the Revised AFP Modernization Act, the DND or the AFP may assign to the BCDA or designate it as disposition entity for the sale, lease, or joint development of military reservations or portions thereof or facilities and immovables not covered under Republic Act No. 7227, as amended, subject to the parameters set by the DND or the AFP and applicable laws, rules, regulations and other related issuances. It also serves as additional funding source for AFP programs and stimulates economic activities in the areas where the camps are located.

With the passage of RA 10349, BCDA will be able to co-develop the idle military reservations which not only assure the AFP of a stable income but will also help the government mitigate the exploitation of these idle lands by professional squatters and land grabbing syndicates.

4. Project-Affected People (PAP)

- Economic Assistance. BCDA improves the quality of life and gives dignity to communities affected by the BCDA conversion program. BCDA gives qualified beneficiaries economic assistance.

BCDA has a community relations unit which takes care of PAP, usually composed of informal settlers, and provides financial assistance and livelihood programs, if need be.

5. Local Government Units (LGUs)/National Agencies

- Improved Economic Conditions. BCDA undertakes infrastructure projects which increase economic opportunities for the communities where the BCDA ecozones and BCDA projects are situated, thus benefiting the LGUs.
- Masterplanning. BCDA assists the LGUs in the masterplanning of their localities where BCDA ecozones and BCDA projects are located.

BCDA holds meetings and/or dialogues with concerned LGUs on matters concerning BCDA projects or properties, where the parties are able to thresh out their concerns.

BCDA also comes up with institutional partnerships with other government agencies, mutually beneficial to both parties, with the end goal of strengthening ties within government and ensuring increased economic activities in the country.

6. BCDA Subsidiaries

- **Funding Source and Policy Directions.** BCDA assists the subsidiaries to be economically viable. BCDA also sets policy directions on properties/lands to be developed in consonance with BCDA's mandate.

BCDA executes Performance Agreements (PAs) with its subsidiaries to set their respective annual key targets and to ensure that they remain committed into delivering their projects and programs. As part of its oversight function, BCDA requires the subsidiaries to submit their Corporate Operating Budget for approval by the Board.

BCDA also holds annual events and programs, such as caucus and summits with the subsidiaries' board of directors, heads and officers, which not only serve to set policy directions but also foster a good working relationship.

7. Employees

- **Professional Growth and Development.** BCDA provides its employees with opportunities for professional growth and development, as well as a competitive compensation and benefits package and a decent working environment.

The BCDA Management, through the Organization Development and Management Department (ODMD), is responsible for the training and development of BCDA personnel. They offer training programs to further hone the employees' skills which translate to better work performance and potential promotion in the future.

BCDA ensures that the employees are kept abreast of pertinent information, especially those affecting their compensation package. These include laws and issuances by the Civil Service Commission (CSC), the Governance Commission for GOCCs (GCG), Office of the President (OP) and other government agencies.

8. Investors/Joint Venture (JV) Partners/Lessees

- **Investment Opportunities.** BCDA enters into sale, lease contracts, joint venture projects and other modes of disposition with its lessees/JV partners, resulting to return on investment which enhances their standing in the real estate industry.

A committee, composed of members from both the BCDA and the JV partners, was created to ensure that BCDA accounts are managed well and that both BCDA and the JV partners/lessees comply with their obligations under the contract.

9. Suppliers

- **Economic Opportunities.** The suppliers gain economic opportunities since BCDA undertakes a lot of procurement activities in the pursuit of its mandate.

Potential bidders/suppliers are able to participate in the biddings conducted regularly by BCDA in a transparent manner and in accordance with the implementing rules and regulations of the Procurement Law or RA 9184.

2.9.1. *Resolution of Conflicts*

2.9.1.1. *In case of conflict between BCDA's stakeholders in the course of BCDA's fulfillment of its main mandate.* BCDA shall be guided by the fulfillment of its main mandate, which is the "sound and balanced conversion into alternative productive uses of the Clark and Subic Military reservations and their extensions (John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station and Capas Relay Station), to raise funds by the sale of portions of Metro Manila Military Camps, and to apply said funds as provided herein for the development and conversion into productive civilian use of the lands covered under the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended."

Likewise, the enhancement of benefits to be derived from said properties to promote the economic and social development of Central Luzon in particular and country in general, will also serve as the guiding principle in the resolution of conflicts between BCDA's stakeholders.

In view of the above, in case of conflict between conversion of former military bases and the disposition of Metro-Manila camps which will affect LGUs and displace informal settlers, BCDA will decide in favor of the fulfillment of its principal mandate, while adopting mitigating measures to lessen the negative impact on its other stakeholders.

2.9.2. *Recognition and respect of stakeholders' rights established by law or through mutual agreements.* Recognizing the vital contribution of its stakeholders, BCDA shall ensure that stakeholders have access to relevant, sufficient and reliable information on a timely and regular basis.

- 2.9.3. *Report on Stakeholder Relations.* BCDA shall communicate with investors, stakeholders and the public at large on their stakeholder policies and provide information on their effective implementation. BCDA shall allow its stakeholder reports to be independently scrutinized in order to strengthen their credibility.
- 2.9.4. *Development, Implementation and Communication of Compliance Programs for Internal Codes of Ethics.* The Board shall apply high ethical standards in the organization with checks and balances that will ensure the corporation is protected from deviation from these standards in the course of the interaction of business considerations with political and public policy ones. BCDA shall develop an internal code of ethics that would give clear and detailed guidance as to the expected conduct of all employees and disciplinary measures for non-compliance therewith. The internal code of ethics should include guidance on procurement processes, as well as develop specific mechanisms protecting and encouraging stakeholders, and particularly employees, to report on illegal or unethical conduct by corporate officers.

2.10 *Disclosure and Transparency*

BCDA shall continue to enhance disclosure and transparency and impose a duty of loyalty of Board Members. Timely and accurate disclosure shall be made on all material matters regarding BCDA, including its financial situation, performance, ownership, and governance.

- 2.10.1. *Disclosure on Material Information.* BCDA shall make a disclosure on, among others, the following material information:
- 2.10.1.1. *Objectives and their fulfillment.* Corporate objectives shall be made clear to all stakeholders, investors and the general public. BCDA shall report on how it fulfills its objectives by disclosing key performance indicators.
- 2.10.1.2. *Material risk factors and measures taken to manage such risks.* BCDA shall establish sound internal risk management systems to identify, manage, control and report on risks. Appropriate disclosure by BCDA of the nature and extent of risk incurred in their operations shall be made. 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.
- 2.10.1.4. *Financial assistance, including guarantees, received*

from the government and commitments made on behalf of BCDA. To give a fair and complete picture of BCDA's financial situation, the mutual obligations, financial assistance or risk sharing mechanisms between the government and BCDA shall be appropriately disclosed. Disclosure shall include details on any government grant or subsidy received by BCDA, any guarantee granted by the government to BCDA for its operations, as well as any commitment that the government undertakes for and on behalf of BCDA.

- 2.10.1.5 *Material transactions with related entities.* Transactions between BCDA and related entities, such as an equity investment of one government owned or controlled 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.

BCDA 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.

- 2.10.2 *Electronic Disclosure of Information.* BCDA shall maintain a website and post therein for unrestricted public access:

2.10.2.1. Institutional Matters:

- 2.10.2.1.1. The latest version of the BCDA Charter.
- 2.10.2.1.2. List of Subsidiaries and Affiliates.
- 2.10.2.1.3. Government Corporate Information Sheet (GCIS) as mandated by the GCG in its Memorandum Circular No. 2012-01.

2.10.2.2. Board and Officers:

- 2.10.2.2.1. Complete Listing of the Directors and Officers with attached resume and their membership in Board Committees.
- 2.10.2.2.2. Complete compensation package of all the board members and officers, including

travel, representation, transportation and any other form of expenses or allowances.

2.10.2.2.3. Information on Board Committees and their activities.

2.10.2.2.4. Attendance Record of Directors in Board and Committee Meetings.

2.10.2.3. Financial Matters:

2.10.2.3.1. Their latest annual audited financial and performance report within thirty (30) days from receipt of such report.

2.10.2.3.2. Audited financial statements in the immediate past five (5) years.

2.10.2.3.3. Quarterly, annual reports and trial balance.

2.10.2.3.4. Current Corporate Operating Budget (COB).

2.10.2.3.5. Local and foreign borrowings.

2.10.2.3.6. Government subsidies and net lending.

2.10.2.3.7. All borrowings guaranteed by the government.

2.10.2.3.8. Any material risk factors and measures taken to manage such risk.

2.10.2.3.9. Performance Evaluation System (PES).

2.10.2.4. Governance Matters:

2.10.2.4.1. Charter Statement/Mission-Vision Statements.

2.10.2.4.2. Performance Scorecards and Strategy Map.

2.10.2.4.3. Organizational Chart.

2.10.2.4.4. Manual of Corporate Governance.

2.10.2.4.5. CSR Statement.

2.10.2.4.6. Such other information or report that the Commission on Audit (COA), the Governance Commission of GOCCs (GCG), or the Government Procurement Policy Board (GPPB) may require.⁴

2.10.3. *Development of internal audit procedures.* BCDA 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.

2.10.4. *Conduct of an independent external audit based on international standards.* BCDA shall undergo a periodic independent external audit based on international standards.⁵

2.10.5. *Observance of the highest quality accounting and auditing standards.* BCDA 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.

2.11 *Communication*

2.11.1. *Communication within the organization.* The Board and Management shall ensure the thorough dissemination of this Manual to all employees and third parties, and shall enjoin the development of organizational policies and processes consistent with the GOCC Code of Corporate Governance and this Manual.

2.11.2. *Education on the Code of Good Public Corporate Governance.* Funds shall be allocated for the conduct of an orientation program to operationalize this Corporate Governance Manual and for the continued education and training of all officers and employees to ensure compliance with the GOCC Code of Corporate Governance and this Manual.

2.12 *Penalties for Non-Compliance*

2.12.1. *Table of Penalties.* To ensure faithful compliance with the GOCC Code of Corporate Governance and the strict adherence to and implementation of the provisions of this Manual, the following penalties shall be imposed, after due notice and hearing, on the Members of the Board and officers who are found liable for any violation, in addition to such penalties as may have been

⁴ Sec. 43, GCG Memorandum Circular 2012-07, "Code of Corporate Governance for GOCCs"

⁵ Government corporations are 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 GOCCs, are deemed sufficient to guarantee the quality and comprehensiveness of accounting information on GOCCs. 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 GOCC's should be subjected to external audits that are carried out in accordance with international standards.

specifically provided:

- 2.12.1.1. The penalty of reprimand shall be meted for the first infraction;
- 2.12.1.2. The penalty of suspension from office shall be imposed upon the offender for the second infraction. The duration of suspension, which shall be determined by the Board, shall be commensurate to the gravity of the violation;
- 2.12.1.3. The penalty of removal from office, in the case of an appointive director, or dismissal from service, in the case of an officer of Management, shall be imposed on the offender for the third infraction. In cases where the offender is a Member of the Board, the Board shall recommend the imposition of the penalty to the GCG.

The Board may, at its discretion, constitute a committee or appoint a Member or officer to conduct a fact finding investigation or a hearing for this purpose. The results of the investigation and/or hearing shall be submitted to the Board for its consideration and approval.

III. THE BOARD OF DIRECTORS

3.1 *Composition of the Board.* The powers and functions of BCDA are exercised by the Board of Directors to be composed of nine (9) members, as follows:

- a) A full-time Chairman;
- b) Eight other members from the private sector, two (2) of whom shall come from the labor sector.⁶

An appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG, whose nominees shall all meet the Fit and Proper Rule, as defined by Republic Act 10149.

The President and CEO has to be first appointed into the BCDA Board as an Appointive Director, with indication that he would be formally nominated and appointed by the BCDA Board as "President and CEO". He shall thereafter be elected annually by the members of the Board from among its ranks. The President and CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.

The Board is the policy making body and is primarily responsible for good governance in BCDA. Corollary to this main responsibility, the Board shall chart

⁶ Sec. 9, R.A. 7227

the corporate strategy and set guidelines for accomplishment of corporate objectives, as well as provide an independent check on management.

3.2. *Mandate and Responsibility for BCDA's Performance.* The responsibilities of Board are articulated in the BCDA Charter and other relevant legislation, rules and regulations. These responsibilities shall include the duty to:

- 3.2.1. Provide corporate leadership to BCDA subject to rule of law, and the objectives set by the State and BCDA.
- 3.2.2. Establish BCDA's vision and mission, strategic objectives, policies and procedures that shall guide its activities, including the means to effectively monitor Management's performance.
- 3.2.3. Define BCDA's values and standards.
- 3.2.4. Foster the long-term success of BCDA and secure its sustained competitiveness and profitability in a manner consistent with its corporate objectives and the best interests of the State.
- 3.2.5. Determine the organizational structure of BCDA, define the duties and responsibilities of its officials and employees and adopt a compensation and benefit scheme at least equivalent to that of the Central Bank of the Philippines.⁷
- 3.2.6. Appoint all officials down to the third level and authorize the BCDA President to appoint all others: Provided, that all appointments shall be based on merit and fitness and all personnel actions shall be in pursuance of Civil Service Laws, rules and regulations, except those coterminous employees of Members of the Board.⁸
- 3.2.7. The Board, in the performance of its duty to manage the business and affairs of BCDA, shall delegate the management authority to the President and CEO. The President is charged by the Board with the day-to-day leadership of Management of BCDA. The President is expected to keep the Board apprised and updated, in an open and transparent manner, of BCDA's progress and of any material deviations from the goals, objectives or policies established by the Board. To this end, the Board shall refrain from giving direct instructions to Management and shall course all directives through the President and CEO.
- 3.2.8. Prepare the annual and supplemental budgets of BCDA.⁹
- 3.2.9. Comply with reportorial requirements, as required in the BCDA Charter, as well as applicable laws, rules and regulations.

⁷ Section 10 (a), Republic Act No. 7227

⁸ Sec. 10 (b), R.A. 7227

⁹ Sec. 10 (c), R.A. 7227

- 3.2.10. Carry out the mandate of BCDA, as provided in its Charter.
- 3.2.11. Act as an effective and independent check on Management.
- 3.3. *Specific Functions of the Board.* In addition to those specified in the Charter, the Board shall perform, among others, the following functions:
 - 3.3.1. Determine BCDA's purpose and value, as well as strategies and general policies, to ensure that BCDA survives and thrives despite financial crises and its assets and reputation are adequately protected.
 - 3.3.2. Determine important policies and establish programs that bear on the character of BCDA with a view towards ensuring its long-term viability and strength.
 - 3.3.3. 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;
 - 3.3.4. Provide sound strategic policies and guidelines on BCDA operating budget and major capital expenditures.
 - 3.3.5. Periodically evaluate and monitor the implementation of such policies and strategies including the business plans, operating budget and Management's performance.
 - 3.3.6. Ensure that BCDA complies with all relevant laws, regulations and codes of best business practices.
 - 3.3.7. Implement a process for the recommendation or nomination of directors who can add value and contribute independent judgment to the formulation of sound corporate strategies and policies for BCDA, its affiliates and subsidiaries.
 - 3.3.8. Establish a competitive selection process to ensure that the key executives of BCDA have the necessary motivation, integrity, competence and professionalism. Align key executive and board remuneration with the long-term interests of BCDA. Appoint competent, professional, honest and highly motivated management officers. Adopt a professional development program for officers and employees, and succession planning for key executives.
 - 3.3.9. Identify key risk areas and performance indicators and monitor these factors with due diligence to enable BCDA to anticipate and prepare for possible threats to its operational and financial viability.
 - 3.3.10. Ensure the integrity of BCDA'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.

- 3.3.11. Establish and maintain an investor and stakeholder relations program that will keep them informed of important developments in the corporation. The CEO or CFO shall exercise oversight responsibility over this program.
- 3.3.12. Oversee the process of disclosure and communications.
- 3.3.13. Adopt and implement a system of internal check and balance within the Board. A regular review and update of such system should be conducted to ensure the integrity of the decision making and reporting process at all times. There shall be a continuing review of BCDA's internal control system in order to maintain its adequacy and effectiveness.
- 3.3.14. Formulate and implement policies that would ensure the integrity and transparency of related party transactions between and among the BCDA, its affiliates, subsidiaries, joint venture partners, stakeholders, directors and officers including their spouses, children and dependent siblings and parents and of interlocking director relationships by Members of the Board. Monitor and manage potential conflicts of interest of Management, Members of the Board and stakeholders, including misuse of corporate assets and abuse in related party transactions.
- 3.3.15. Constitute Board Committees as may be necessary to assist the Board in the performance of its functions.
- 3.3.16. Establish and maintain an alternative dispute resolution system that can amicably settle conflicts or differences between the BCDA and its affiliates, subsidiaries, joint venture partners, stakeholders or third parties, including regulatory authorities.
- 3.3.17. Meet regularly to properly discharge its responsibilities. The minutes of such meetings should be duly recorded. Independent views during Board meetings shall be encouraged and given due consideration.
- 3.3.18. Conduct and maintain the affairs of BCDA within the scope of its authority, as prescribed in its Charter and in accordance with existing laws, rules and regulations.
- 3.3.19. Attest to the truth and fairness of the financial statements of BCDA.

- 3.4 *Specific Duties and Responsibilities of a Director.* A director should observe the following norms of conduct:
- 3.4.1. Remain fit and proper for the position for the duration of his/her term;
 - 3.4.2. Conduct fair business transactions and ensure that his/her personal interest does not conflict with the interests of the corporation;
 - 3.4.3. Devote time and attention necessary to properly and effectively perform his/her duties and responsibilities;
 - 3.4.4. Act honestly and in good faith, in the best interest of the corporation, including its stakeholders;
 - 3.4.5. Act judiciously and exercise independent judgment; and
 - 3.4.6. Observe confidentiality.
- 3.5 *Term of Office.* In accordance with RA 10149, the term of office of the Chairman and each Member of the Board shall be for one (1) year, commencing on the 1st of July and ending on the 30th of June of the immediately succeeding year, unless sooner removed for cause.¹⁰ In the event that no new Board is appointed by His Excellency, from a shortlist provided by the GCG, after the official term of the Board of Directors, the existing Board, will be considered on "hold-over" capacity and thus, is still a legitimate Board with full authority to bind BCDA.¹¹
- 3.6 *Qualifications of Board Members.* No person shall be appointed or designated to the Board unless he is a natural-born Filipino citizen, of good moral character, of unquestionable integrity, and of recognized competence in relevant fields including, but not limited to, economics, management, international relations, law or engineering, preferably naval or aeronautical.¹² All Board members must be appointed by His Excellency pursuant to R.A. No. 10149, GCG's selection and nomination procedures, and the GCG Fit and Proper Rule.¹³
- 3.7 *Charter of Expectations.* The Board recognizes its duties and shall adopt a Charter of Expectations as a general statement of its expectations as to how it will discharge its duties. The Charter will also serve as a tool in assessing the Boards' performance and that of individual directors.
- 3.8 *Permanent Disqualification of Board Members.*¹⁴ 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,

¹⁰ Sec. 17, R.A. 10149.

¹¹ GCG Memorandum Circular No. 2012-3, "Status of Holdover and Acting Directors/Trustees in GOCC Boards and Requiring the Submission of Information on Their Respective Qualifications," 08 February 2012 citing SEC Opinion No. 06-18, 20 March 2006.

¹² Sec. 9, R.A. 7227.

¹³ GCG Memorandum Circular No. 2012-06

¹⁴ Art. 6.1, GCG MC No. 2012-05, "Fit and Proper Rule for Appointive Directors and CEOs of GOCCs", 28 November 2012.

as the case may be, thus:

- 3.8.1. Persons who have been convicted by final judgment of a court or tribunal of:
 - 3.8.1.1. 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;
 - 3.8.1.2. A crime or offense where the sentence imposed is a term of imprisonment of at least six (6) years and one (1) day; or
 - 3.8.1.3. A violation of the laws, rules and regulations particularly applicable to the sector under which the GOCC is classified, and in other related sectors;
- 3.8.2. Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;
- 3.8.3. Directors, CEOs and Officers of GOCCS who have been:
 - 3.8.3.1. Found by a competent administrative body as administratively liable for violation of laws, rules and regulations particularly applicable to the sector of the GOCC concerned, as well as those covered by related sectors, and where a penalty of removal from office is imposed, which finding of the administrative body has become final and executory;
 - 3.8.3.2. Determined by the Commission on Audit (COA) pursuant to a Notice of Disallowance which has become final and executory, to have, by virtue of their office, acquired or received a benefit or profit, of whatever kind or nature including, but not limited to, the acquisition of shares in corporations where the GOCC has an interest, using the rights, options or properties of the GOCC for their own benefit, receiving commission on contracts from the GOCC's assets, or taking advantage of corporate opportunities of the

GOCC; or

- 3.8.3.3 Found to be culpable for a GOCC'S insolvency, closure, or cessation of operations, as determined by the GCG in consultation with the appropriate Government Agency;
- 3.8.4. 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:
 - 3.8.4.1. A violation of laws, rules and regulations relevant to the sector of the GOCC concerned, as well as in related sectors; or
 - 3.7.4.2. Any offense/violation involving dishonesty or breach of trust; and
 - 3.7.4.3. Which finding of such Government Agency has become final and executory
- 3.9. *Temporary Disqualification of Incumbent Board Members.*¹⁵ Incumbent Members of the Board of Directors shall be temporarily disqualified from appointment or re-appointment, or from continuing to hold office, as the case may be, if:
 - 3.9.1. They refused or failed to fully disclose the extent of their business interest or any Material Information to BCDA, GCG or the appropriate Government Agency, 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, rule or regulation, applicable to such institutions, and such disqualification shall be in effect as long as the refusal or failure persists;
 - 3.9.2. They have been absent or 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;
 - 3.9.3. They are delinquent in the payment of their obligations, defined as follows:

¹⁵ Art. 6.2, GCG MC No. 2012-05.

- 3.9.3.1. 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.
- 3.9.3.2. Obligations shall include all borrowings obtained by a Director 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; the spouse or child under the parental authority of the Director; any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a Director; a partnership in which a Director, or his/her spouse, is the managing partner or a general partner owning a controlling interest in the partnership; and a corporation, association or firm wholly-owned or majority of the capital of which is owned, by any or a group of persons mentioned herein.
- 3.9.3.3. Such temporary disqualification shall be in effect as long as the delinquency persists.
- 3.9.4. They have been convicted in the first instance by a court for:
 - 3.9.4.1 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;
 - 3.9.4.2. 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;
 - 3.9.4.3. Violation of banking laws, rules and regulations; or
 - 3.9.4.4 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 BCDA of a certified true copy of a judgment amounting to an acquittal;
- 3.9.5. They are Directors or 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;

- 3.9.6. They are 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, the BCDA Manual of Corporate Governance, or existing rules and regulations of the GCG; and such temporary disqualification applies until the lapse of the specific period of disqualification or upon approval by the GCG of such Directors' appointment/reappointment;
- 3.9.7. They 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 BCDA an official certification that he/she has attended such seminar;
- 3.9.8. They are 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;
- 3.9.9. They are under preventive suspension, whether it be in the government service or in private sector service; Provided, however, that Board shall determine from the cause for the preventive suspension whether it shall constitute a ground for temporary disqualification;
- 3.9.11. They have derogatory records as certified to 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 Directors or the ability to effectively discharge their 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 the Board shall determine from the nature of the derogatory record whether it shall constitute a ground for temporary disqualification;
- 3.9.12. They are Directors or 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 GOCC, as well as in related sectors, where a penalty of suspension from office or fine is imposed,

regardless of 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

- 3.9.13. They have 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.

3.10. *Internal Control Responsibilities of the Board*

- 3.10.1. The control environment of BCDA consists of:
 - 3.10.1.1. The Board which ensures that the BCDA is properly and effectively managed and supervised;
 - 3.10.1.2. A Management that actively manages and operates BCDA in a sound and prudent manner;
 - 3.10.1.3. The organizational and procedural controls supported by effective management information and risk management reporting systems; and
 - 3.10.1.4. An independent audit mechanism to monitor the adequacy and effectiveness of BCDA's governance, operations, and information systems, including the reliability and integrity of financial and operational information, the effectiveness and efficiency of operations, the safeguarding of assets, and compliance with laws, rules, regulations and contracts.
- 3.10.2. The minimum internal control mechanisms for the Board's oversight responsibility include, but shall not be limited to:
 - 3.10.2.1. Ensuring the presence of organizational and procedural controls, supported by an effective management information system and risk management reporting system.
 - 3.10.2.2. Reviewing conflict-of-interest situations and providing appropriate remedial measures for the same.
 - 3.10.2.3. Recommending, nominating and electing a President & CEO with the appropriate ability, integrity, and experience to fill the role. The President & CEO shall be subject to the disciplinary authority of the Board.¹⁷

¹⁷ Sec. 18, R.A. 10149.

3.10.2.4. Reviewing proposed key executive appointments.

3.10.2.5. Ensuring the selection, appointment and retention of qualified and competent management.

3.10.2.6. Reviewing the BCDA's personnel and human resources policies, compensation plan and the management succession plan.

3.11. *Collective and Individual Liability of Board Members.* There shall be no difference between the liabilities of different Board Members, whether nominated by the government or other stakeholders.

Board members who willfully and knowingly vote or consent to patently unlawful acts of BCDA 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 resultant damages suffered by BCDA, the State, stakeholders and/or third 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 BCDA 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 BCDA and must account for the profits which otherwise would have accrued to BCDA.

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, also known as the Anti-Graft and Corrupt Practices Act.

3.12. *Exercise of Objective and Independent Judgment.* The Board must have some degree of independence from Management in order to effectively fulfill its responsibilities. To this end, the Board shall include a sufficient number of competent non-executive board members who are capable of independent judgment. These independent board members should have the relevant competence and experience and it is advisable that they be recruited from the private sector. They must also comply with the following requirements:

3.12.1. Independent board members shall hold no interests or relationships with BCDA that may hinder their independence from BCDA or its management and which may interfere with the exercise of independent judgment in carrying out their responsibilities.

3.12.2. An independent board member shall submit to the Corporate Secretary a letter of confirmation stating that he holds no interests affiliated with BCDA, its management or controlling

shareholder at the time of his appointment and/or reappointment

- 3.13. *Board Meetings and Quorum Requirement.* The Board shall schedule and hold regular meetings and convene for special meetings when required by the exigencies of business. Regular meetings shall be held monthly while special meetings may be held at any time upon the call of the President & CEO.

Notice of regular or special meetings stating the date, time and place of meeting must be sent to each and every director at least one (1) day prior to the scheduled meeting. A director may waive this requirement either expressly or impliedly.

A majority of directors shall constitute a quorum for the transaction of corporate business. Every decision of at least a majority of the directors present at a meeting at which there is a quorum shall be valid as a corporate act except for the election or appointment of officers which shall require the vote of all the members of the board.

Every member shall attend such meetings in person, through teleconferencing or video conferencing to ensure that the quorum requirement is met, unless otherwise prevented by justifiable causes.

An Independent Director must always be in attendance in any Board Meeting.

- 3.14. *Remuneration of Directors and Officers.* The compensation of the Members of the Board of Directors and Officers shall have the following components:

3.14.1. *Per diem* for every board meeting actually attended; and

3.14.2 Performance-Based Incentives that may be allowed based on agreed upon metrics as provided under Section 11 of Executive Order No. 24, Series of 2011.¹⁸

Members of the Board shall receive a *per diem* based on the BCDA classification approved by the GCG. The *per diem* collected per month shall not exceed the equivalent of four (4) meetings¹⁹ and shall further be subject to the limits set forth in Sections 9 and 10 of Executive Order No. 24, Series of 2011. Any increases from the current rates of per diems being granted shall take effect only upon approval by the President of the Philippines.

Officers of the Board who are not concurrent Members of the Board shall receive a *per diem* based on rates authorized by the BCDA Board. The *per diem* collected per month shall not exceed the equivalent of four (4) meetings²⁰ and shall further be subject to the limits set forth in Sections 9

¹⁸ Sec. 8, E.O. No. 24, Series of 2011.

¹⁹ Sec. 9, R.A. 7227.

²⁰ Sec. 9, R.A. 7227.

and 10 of Executive Order No. 24, Series of 2011.

3.15 *Multiple Board Seats.* BCDA shall initially have the majority of the Board of Directors of the subsidiaries, of which at least one (1) director shall be the Chairman of the BCDA and a second director shall be the President & CEO of BCDA or his designated representative.²¹ Each Member of the Board may be nominated and appointed by the President of the Philippines to represent BCDA in the Governing Boards of subsidiaries and affiliates, but not exceeding two (2) positions. They shall be entitled to receive the *per diems* granted to the members of the Governing Boards of such subsidiaries and affiliates, subject to the limitations provided under GCG Memorandum Circular No. 2012-02 (Re-Issued).

3.16. *Annual Performance Evaluation of the Board.* Performance Agreements shall be entered into between BCDA, as represented by its Governing Board, and the State, as represented by GCG.²² BCDA shall submit the components of the Performance Evaluation System (PES) to GCG for the succeeding calendar year annually. Submissions may be made during the period beginning the first working day of July and ending the last working day of August. Renegotiation of previously established Annual Targets for succeeding years can also be done during this period. The negotiation of the Performance Agreement shall conclude by the last day of October of the same year the PES components were submitted. Thereafter, the BCDA Board shall ratify the Performance Agreement.²³

3.16.1. *Measures/Performance Indicators.* The BCDA Board's performance shall be based on the Measures/Performance Indicators and Annual Targets as contained in the Performance Agreement between BCDA and the GCG. It is understood that BCDA must achieve a weighted average rating of 90% to be eligible to grant any performance-based incentives.²⁴

3.16.2. *Strategic Initiatives.* BCDA commits to undertake key programs and/or projects identified as having significant impact on its performance and shall provide quarterly monitoring reports²⁵ to the GCG for this purpose, while at all times adhering to the principles of transparency, good governance and integrity.

3.16.3. *Performance Evaluation for Directors (PED).* The PED shall cover all Appointive Directors as the basis for the determination of whether they shall be recommended for reappointment.²⁶ It shall also cover the *Ex Officio* Directors or their alternates for the purpose of reporting to the President the performance of such *Ex Officio* Directors, as well as to allow the GCG to evolve a good governance system for *Ex Officio* Directors in BCDA.

²¹ Sec. 16, R.A. 7227.

²² Sec. 3, GCG MC No. 2013-02, "Performance Evaluation System for the GOCC Sector", 29 April 2013.

²³ Sec. 7.1., GCG MC 2013-02.

²⁴ Sec. 5, GCG MC No. 2013-02

²⁵ Sec. 7.2, GCG MC No. 2013-02

²⁶ Section 2, GCG MC. No. 2014-03

IV.

BOARD COMMITTEES AND OVERSIGHT DIRECTORS

To aid in ensuring compliance with the principles of sound corporate governance, the Board may create such committees, as it may deem necessary to support it in the performance of its functions and in accordance with the Charter and to aid in good governance.

4.1. *Regular Committees.* As a minimum, however, the Board shall be supported by the following regular committees:

4.1.1. *Audit and Corporate Governance Committee.* There shall be an Audit and Corporate Governance Committee composed of at least three (3) members. An independent board member, if any, shall chair the Audit and Corporate Governance Committee. Each member shall have an adequate understanding of accounting and auditing principles in general and of the BCDA's financial management systems and environment in particular.

The Office of the Internal Auditor shall functionally report to the Board Audit and Corporate Governance Committee (BACGC) and administratively, to the Chairman of the BCDA Board. The BACGC shall be composed of three (3) members of the BCDA Board, to be chaired by an independent Board Member. The BACGC shall ensure that the reporting level of the Office of the Internal Auditor shall allow the internal audit activity to maintain its independence as it accomplishes its tasks.

The BACGC shall have the following functions and responsibilities:

4.1.1.1 Review and approve the Annual Audit Plan of the Office of the Internal Auditor.

4.1.1.2 Review the Office of the Internal Auditor audit report and recommend solutions that would address the audit findings to the BCDA Board. The BACGC shall ensure that the resolutions, as concurred by the BCDA Board, shall be acted promptly by management so that the audit findings shall be satisfactorily addressed.

4.1.1.3 Ensure that the Office of the Internal Auditor shall review and study the periodic financial statements focusing on the propriety of changes in accounting policies and practices, significant adjustments resulting from the audit, going concern assumptions and compliance with accounting standards; and check the financial reports against its compliance with both the internal financial management policies and pertinent accounting standards, including regulatory

requirements.

- 4.1.1.4 Review the functions and organizational set-up of the Office of the Internal Auditor on a regular basis.
 - 4.1.1.5 Ensure that the Office of the Internal Auditor shall monitor and evaluate the adequacy of BCDA's internal control systems, and that proper coordination is made with the Commission on Audit (COA).
 - 4.1.1.6 Ensure that the internal auditors shall have free and full access to all the company's records, properties and personnel relevant to the internal audit activity and that the internal audit activity should be free from interference in determining the scope of internal auditing examinations, performing work, and communicating results.
 - 4.1.1.7 Ensure that the necessary resources needed by the Office of the Internal Auditor to accomplish its avowed duties and responsibilities are available. The BACGC shall review the annual budget of the Office of the Internal Auditor and recommend the same to the BCDA Board for approval.
 - 4.1.1.8 Undertake such other functions as may be delegated by the Board and BACGC.
- 4.1.2. *Business Development Committee.* There shall be a Business Development Committee composed of at least three (3) members. Each member shall have experience in the fields of business, economics, finance, management and/or marketing. The committee shall have the following particular duties and responsibilities:
- 4.1.2.1. Review strategies and policies that generally affect the investment climate, marketing and after-sales service programs of BCDA.
 - 4.1.2.2. Conduct periodic review and validation to determine the viability of the assets for disposition.
 - 4.1.2.3. Conduct regular validation and review of the Master Development Plans for BCDA properties to determine suitability to current real estate trends and developments.
 - 4.1.2.4. Formulate sound strategic business management framework to maximize benefits from the disposition and development of land and other assets.

4.1.2.5. Assess investment proposals which will require study for formulation of policies for approval by the Board.

4.1.3. *Finance and Investments Committee.* There shall be a Finance, Investments and Promotions Committee composed of at least three (3) members. Each member must possess an adequate understanding of accounting and auditing principles in general and of the BCDA's financial management systems and environment in particular. The committee shall have the following particular duties and responsibilities:

4.1.3.1. For Sale, Lease, Joint Venture Agreement or similar agreement involving BCDA properties:

- a. Review the financial feasibility of the mode of disposition and financing requirement of the project, if any, as endorsed by the Business Development Department (BDD);
- b. During implementation, review continuing financial status and compliance with the agreement, as reported by the Subsidiary, Affiliate and Project Monitoring Department (SAPMD),
- c. Identify issues, provide guidance and propose solutions for approval of the Board; and
- d. At the conclusion of the agreement, evaluate the financial performance, as reported by the SAPMD.

4.1.3.2. Exercise oversight function in the fiscal management of BCDA resources:

- a. Formulate policies and guidelines for the annual and supplemental budgets of the BCDA and its subsidiaries for approval of the Board;
- b. Provide guidelines for the investment of corporate funds and conduct periodic review to determine profitability of investments and/or placements for approval of the Board;
- c. Regularly review receivables and recommend actions to the Board to increase collection efficiency; and
- d. Determine the necessity of incurring loans or other financing arrangement, and review proposed terms for approval by the Board.

4.1.3.3. Exercise financial oversight on BCDA Subsidiaries and Affiliates:

- a. Recommend appropriate business model for, and review the financial targets of the performance agreement with, the subsidiary;
- b. Review the proposed annual and supplemental budget of the Subsidiaries for approval by the BCDA Board;
- c. Review the performance and determine the financial viability of subsidiaries and affiliates, and recommend the need for reorganization, streamlining, abolition or privatization for approval of the Board; and
- d. Provide financial policies and guidelines for approval by the Board, and monitor compliance, based on report of Management.

4.1.3.4. Conduct monthly review of BCDA's financial statements / management reports prior to submission to the Board.

4.1.3.5. Recommend changes in the financial and accounting policies, where appropriate and in accordance with the pronouncements of regulatory bodies, for approval by the Board.

4.1.3.6. Define and formulate strategic directions for BCDA Subsidiaries for approval by the Board.

4.1.3.7. Develop a uniform business model, if applicable, for BCDA Subsidiaries, for approval by the Board.

4.1.4. *Organizational Development Committee.* There shall be an Organizational Development Committee composed of at least three (3) members, which shall include at least one (1) of the directors representing the labor sector.

The Organizational Development Committee shall install and maintain a process to ensure that all persons to be nominated for appointment or reappointment to the board of BCDA and its subsidiaries have the requisite qualifications and none of the disqualifications as well as a system to review and evaluate the qualifications of all persons nominated to positions in BCDA, its subsidiaries and affiliates which require appointment by the Board.

The committee shall have the following particular duties and

responsibilities:

- 4.1.4.1. Assist the Board of Directors in the conduct of studies, policy formulation, and monitoring implementing guidelines pertaining to issues, concerns and problems that affect organization and personnel.
- 4.1.4.2. Coordinate with Management in addressing specific key result areas (KRAs) and adherence to existing policies on such matters as personnel recruitment, performance evaluation standards and processes, assignments, promotions and entitlements.
- 4.1.4.3. Pursue broad organizational goals such as the promotion of meritocracy, the development of teamwork and the enhancement of morale among personnel.
- 4.1.4.4. Review and approve the Human Resource Development Program of the BCDA.
- 4.1.4.5. Conduct periodic review of the organizational structure to ensure that it remains responsive to the BCDA Group of Companies' goals, objectives and strategies.
- 4.1.4.6. Oversee the development and periodic update of a Personnel Manual to ensure documentation and enforcement of as well as compliance with personnel policies, guidelines on employee benefits, and code of conduct for officers and employees.
- 4.1.4.7. Review and evaluate the qualifications of all persons nominated to the Board as well as those nominated to other positions requiring appointment by the Board and provide assessment on the Board's effectiveness in directing the process of renewing and replacing Board members.
- 4.1.4.8. Recommend to the GCG nominees for the shortlist in line with the BCDA and subsidiaries' Board composition and succession plan.
- 4.1.4.9. Provide oversight to the Selection and Placement of Officers Committee of Management.
- 4.1.4.10. Establish a formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of corporate officers and directors, and provide oversight over remuneration of senior management and other key personnel, ensuring that compensation is consistent

with the corporation's culture, strategy and control environment.

4.1.4.11. Develop recommendations to the GCG for updating the CPCS and ensure that the same continues to be consistent with the corporation's culture, strategy and control environment.

4.1.5. *Risk Management, Legal and External Relations Committee.* There shall be a Risk Management, Legal and External Relations Committee composed of at least three (3) members. The Chairman of the Committee must possess an adequate understanding of Philippine Law and the legal system and knowledgeable in strategic publicity and issues management. The committee shall evaluate, review and monitor legal and risk management policies, structures and processes as defined by Management. It shall also recommend measures to address communication and publicity issues and concerns and to mitigate, minimize or eliminate risks affecting the organization. In particular, the committee shall:

4.1.5.1. Monitor the creation of a risk management structure for the organization by Management.

4.1.5.2. After the creation of the structure, the committee shall evaluate, review and monitor risk management policies, structures, and processes as defined by Management. It shall also recommend measures to address, mitigate, minimize or eliminate risks affecting the organization.

4.1.5.3. Review, evaluate and monitor policy-level studies, risk and threat assessments and other reports provided by Management for consideration of the Board.

4.1.5.4. Assess information periodically provided by Management on risk exposures and risk management activities.

4.1.5.5. Review, evaluate and monitor Management's researches and the preparation of analytical materials on probable causes, explanations and possible solutions to risks that the corporation faces.

4.1.5.6. Review and endorse to the BCDA Board position papers and key policy issues prepared by Management for use of any branch of the government.

4.1.5.7. Review, monitor and recommend measures on legislative proposals affecting the organization.

- 4.1.5.8. Assess the Annual Planning Program of the Planning Services Department (PSD) as it relates to risk management.
- 4.1.5.9. Provide oversight over the senior management's activities in managing credit, market liquidity, operational, legal and other risks of the corporation.
- 4.1.5.10. Review and evaluate public affairs issues affecting BCDA activities, programs and projects, as identified and presented by Management. It shall also review and evaluate the measures recommended by Management to address such issues for possible consideration of the Board.
- 4.1.5.11. Review, evaluate and monitor management policies pertaining to the organization's relationship with its stakeholders as well as with national and local government units.

Regular committees may act, by majority vote of all its members, on such specific matters, as may be delegated to it by the Board, except with respect to the approval of any action for which at least a two-thirds (2/3) vote of the Board is required; and the amendment or repeal of any resolution of the Board which by its express terms is not so amendable nor susceptible to repeal.

Each committee shall develop its own charter or terms of reference to define more clearly their responsibilities, reporting relationships, resources requirements, conducts of business, and costs. The charters or terms of references shall be presented to the Board for confirmation.

- 4.2. *Specialized Committees.* When necessary, the Boards shall set up specialized committees to support the Board in the performance of its functions. When the creation of specialized committees is not mandated by law or by the Charter, the Board should 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 member and include a sufficient number of independent members. The existence of specialized board committees shall not excuse the Board from its collective responsibility for all matters. Specialized board committees shall have written terms of reference that define their duties, authority and composition. Specialized board committees shall report to the Board and the minutes of their meetings shall be circulated to all board members.
- 4.3. *Ad Hoc Committees.* The Board may also set up Ad Hoc Board Committees to address particular issues affecting BCDA which may include operational matters. Such issues may encompass making operational decisions that are specifically delegated by the Board. For this reason membership in the committee may include representatives of

Management. Ad Hoc Committees are temporary in nature and shall be dissolved after they have served the purpose specified for their creation.

- 4.4. *Per Diems for Committee Meetings.* The maximum *per diem* per committee meeting attended provided to Members of the Board of Directors shall be based on the classification approved by the GCG and shall be at most sixty percent (60%) of the amount set per Board Meeting but not to exceed the maximum amount corresponding to the classification.²⁷
- 4.5. *Oversight Directors.* Certain occasions may arise when the Board, through the Chairman, may deem it necessary and/or convenient to tap a Board Committee or a particular Member of the Board to oversee a specific project or function. This is in line with Corporate Directorship principles of availing of specific expertise and developing niches of contributions of Directors. A Member of the Board assigned to oversee a specific project or function shall provide consultancy-type advice and service, analyze information and recommend to the Board decisions/courses of action to be taken.

Such assignments are mere extensions of corporate governance and oversight functions of the Board of Directors and do not constitute the grant of management authority and functions.

- 4.6. *Reporting and Coordination.* Board Committees and Oversight Directors report directly to the Board. This reporting function is inherent in the mandate of each committee. Comments and/or actions taken by management shall be incorporated in the Board Committee report to the Board.

In the Conduct of their functions, the Board, its Committees or Oversight Directors may require specific information, conduct visits to facilities, hold discussions with Management officials and rank-and-file, and consult outsiders (professional experts, Local Government Units (LGUs), National Government Organizations (NGOs), etc.) Accordingly, the Board, its Committees or Oversight Directors shall liaise with Management with whom they may discuss functional concerns and tasks, preliminary findings and recommendations. As a rule, Board Committees or Oversight Directors shall inform the Office of the President & CEO and the Board Secretariat when undertaking activities involving internal affairs with a view to facilitate coordination with units or offices concerned. The Board Secretariat shall be responsible for following-up arrangements with the latter, as required.

- 4.7. *Support Staff.* A Technical Working Group (TWG) and Secretariat shall be permanently assigned to each Board Committee. The composition and membership of said TWG shall be identified by the respective Committees. Members of management and other BCDA employees may be called upon

²⁷ Sec. 10, E.O. No. 24, Series of 2011.

by the Board Committees as may be necessary to act as part of the TWG. The Board Secretariat shall likewise serve as the committee secretariat.

V. BOARD OFFICERS

- 5.1. *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board. He shall:
 - 5.1.1. Schedule meetings to enable the Board to perform its duties responsibly while not interfering with the flow of BCDA's operations.
 - 5.1.2. Prepare the meeting agenda in consultation with the President and CEO.
 - 5.1.3. Exercise control over quality, quantity and timeliness of the flow of information between management and the Board.
 - 5.1.4. Ensure compliance with the GOCC Code of Corporate Governance.
- 5.2. *Vice-Chairman.* In the absence of the Chairman of the Board, the Vice-Chairman shall preside at the meetings of the Board and perform the functions of the Chairman.
- 5.3. *President and Chief Executive Officer.* The President & CEO is ultimately accountable for the BCDA's organization and procedural controls. In addition to the duties imposed on him by the Board and R.A. 7227, the President shall:
 - 5.3.1. Exercise general supervision of the business, affairs, and property of the corporation, and over its employees and officers.
 - 5.3.2. See to it that all orders and resolutions of the Board are carried into effect.
 - 5.3.3. Submit to the Board as soon as possible after the close of each fiscal year a complete report of the operations of BCDA for the preceding year, and the state of its affairs; and
 - 5.3.4. Report to the Board from time to time all matters which the interest of BCDA may require to be brought to its notice.
- 5.4. *Corporate Secretary.* The Corporate Secretary need not be a member of the Board. 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:
 - 5.4.1. Serve as an adviser to the Members of the Board on their responsibilities and obligations.

- 5.4.2. Keep the minutes of meetings of the Board, and all other committees in a book or books kept for that purpose, and shall furnish copies thereof to the Chairman, the President and CEO and other members of the Board as appropriate.
- 5.4.3. Keep in safe custody the seal of BCDA and affix it to any instrument requiring the same.
- 5.4.4. Have charge of such books and papers as the Board may direct.
- 5.4.5. Attend to the giving and serving of notices of Board and Board Committee meetings.
- 5.4.6. Be fully informed and be part of the scheduling process of other activities of the Board.
- 5.4.7. 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.
- 5.4.8. Oversee the adequate flow of information to the Board prior to meetings.
- 5.4.9. Ensure compliance with and/or fulfillment of disclosure requirements to regulatory bodies.

The Board shall have separate and independent access to the Corporate Secretary.

5.5. *Corporate Treasurer/Chief Finance Officer.* The Vice President for Finance shall be the Corporate Treasurer/Chief Finance Officer (CFO) of BCDA. The CFO shall be responsible for the following:

- 5.5.1. Provide the Board 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.
- 5.5.2. Maintain the integrity of accounting records as the basis of the financial statements and reports provided to the Board for decision making and to government regulatory bodies in compliance with statutory requirements.
- 5.5.3. Promote investor and public confidence in BCDA 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.
- 5.5.4. Strengthen internal controls by monitoring compliance with

policies and recommending to Management and the Board appropriate actions and changes in systems and procedures in the exigencies of the service.

- 5.6. *Compliance Officer.* The Board shall appoint a Compliance Officer who shall report directly to the Chairman of the Board. He shall perform the following duties:
- 5.6.1. Monitor compliance by BCDA with the GOCC Code of Corporate Governance and the rules and regulations of regulatory agencies, where applicable, 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.
- 5.6.2. Certify the extent of the BCDA's compliance with the GOCC Code of Corporate Governance for the completed year and, if there are any deviations, explain the reason for such deviation.

VI. DUTIES OF DIRECTORS AND OFFICERS

- 6.1 *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 BCDA, with utmost good faith in all dealings with the properties, interests and monies of the BCDA;²⁸ and (b) they are constituted as trustees in relation to the properties, interests and monies of the BCDA.²⁹

Where a Member of the Board or an Officer, by virtue of the office, acquires or receives for oneself a benefit of profit, of whatever kind or nature including, but not limited to, the acquisition of shares in corporations where the BCDA has an interest, using the properties of BCDA for their own benefit, receiving commission on contracts from BCDA's assets, or taking advantage of corporate opportunities of BCDA, all such profits or benefits shall be subject to restitution under Section 24 of Republic Act No. 10149, without prejudice to any administrative, civil or criminal action against Members of the Board of Directors or Officers. This provision shall be applicable notwithstanding the fact that such member of the Board or Officer risked one's own funds in the venture.³⁰

- 6.2 *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,"³¹ with its declared policies: (a) to promote to a high standard of ethics in public service; and (b) Public Officials and employees shall at

²⁸ Opening Paragraph of Sec. 19, R.A. No. 10149

²⁹ Sec. 20, R.A. No. 10149

³⁰ Sec. 20, R.A. No. 10149

³¹ R.A. No. 6713

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.³²

6.3 *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 BCDA to faithfully and timely comply, with all legal provisions, rules and regulations, and corporate governance standards, applicable to them and to the BCDA in which they serve, and to act within the bounds of their Charter.

6.4 *Duty of Diligence.* The Fiduciary duty of diligence of Directors and Officers to always act in the best interest of the BCDA, with utmost good faith in all its dealings with the property and monies of the BCDA, includes the obligation to:

- (a) Exercise independent judgment by viewing each problem/situation objectively. When a disagreement with other board members occurs, the director should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks are beneficial to the corporation³³;
- (b) Gain a working knowledge of the statutory and regulatory requirements affecting BCDA, including the contents of its mandate, applicable laws, rules and regulations. A director should also keep himself informed of industry developments and business trends in order to safeguard the corporation's competitiveness;
- (c) Apply sound business principles to ensure the financial soundness of the BCDA;³⁴ and
- (d) 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.³⁵

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

6.5 *Duty of Loyalty.* The fiduciary duty of loyalty of Directors and Officers to

³² Sec. 2, R.A. No. 6713

³³ Sec. 3.8 (a) of the OGCC Model Code of Corporate Governance

³⁴ Sec. 19 (d), R.A. No. 10149

³⁵ Sec. 19 (e), R.A. No. 10149

always act in the best interest of the BCDA, with utmost good faith in all its dealing with the property and monies of the BCDA, includes the obligation to:

- (a) Act with utmost and undivided loyalty to the BCDA;³⁶
- (b) Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;³⁷
- (c) Avoid (1) taking for themselves opportunities related to the BCDA's business; (2) using the BCDA's property, information or position for personal gain; or (3) competing with the BCDA's business opportunities.

6.6 *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 officer 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.

6.7 *Duty to be Responsive to Stakeholders.* Every Director and Officer accepts the position fully aware that he assumes certain responsibilities not only to the BCDA and its stockholders, but also with different Constituencies or Stakeholders, who have the right to expect that the BCDA is being run in a prudent manner and with due regard to the interests of all Stakeholders.³⁸ Consequently, members of the Board and Officers shall deal fairly with the BCDA's employees, suppliers and other Stakeholders. No member of the Board or Officer may take unfair advantage of the BCDA's employees, suppliers and other Stakeholders through manipulation, concealment, abuse of confidential or privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

VII. OBLIGATIONS OF BCDA TO DIRECTORS AND OFFICERS

7.1 *Providing for Staff Support to Directors.* BCDA shall, as appropriate, provide independent board members with technical support staff to assist them in performing their duties. Independent board members may, when necessary, also request and receive support from officers, employees or outside professionals such as auditors, advisers and counsel to perform such duties. BCDA shall cover the reasonable expenses of providing such support.

7.2 *Obtaining of Directors' and Officers' Liability Insurance (DOLI).* The authority to provide the DOLI for members of GOCCs' governing Boards

³⁶ Sec. 19 (a), R.A. No. 10149

³⁷ Sec. 19 (c), R.A. No. 10149

³⁸ Taken from Sec. II(2)(a), SEC Code of Corporate Governance, SEC Memorandum Circular No. 2, s. 2002

and officers is stipulated under Section 32 of the *Code of Corporate Governance*.

- 7.2.1. Purpose. Having imposed the highest level of responsibility and accountability on the members of the Board and Officers, i.e., that of extraordinary diligence, it is equitable that when the BCDA itself and/or the members of the Board and Management are sued before tribunals on matters that are within the official functions and capacity and on matters where business judgment has been exercised in good faith, that there be proper recovery of the costs of litigation and the judgment liability imposed. It is prudent for BCDA to obtain DOLI coverage for itself and the BCDA Board and Officers against contingent claims and liabilities that may arise from, as well as expenses that may be incurred in prosecuting, the actions that may be filed against BCDA arising from the actions of the BCDA Board and/or Officers that may cause loss or damage to third parties.³⁹
- 7.2.2. Definition and Scope. The DOLI Policy is an insurance cover designed to protect the Government-Owned and Controlled Corporation (GOCC), Government Financial Institution (GFI), agency, or commission and its directors/trustees and officers against the cost of litigation and liability in the course of performing the official acts of its governing Board and Management.
- 7.2.3 Procurement. Procurement of DOLI coverage is subject to public bidding for private insurers, pursuant to all applicable procurement laws, rules and regulations, Republic Act 9184, and Administrative Order No. 33, or through direct contracting with GSIS.
- 7.2.4 Directors' and Officers' Liability Fund (DOLF). In the event that BCDA finds itself in a situation where under the mandates of its charter, obtaining DOLI coverage from accredited insurance providers may not be feasible because the premium costs may have proven to be prohibitive for BCDA's situation that a procurement process would not attract accredited insurance providers, or that the reimbursement process afforded by the insurance company may be a long and tedious process that undermines the annual budget of BCDA⁴⁰, BCDA may establish a DOLF (The Fund) as an alternative to obtaining a DOLI coverage, based on actuarial and feasibility studies commissioned by the Board.

The DOLF (The Fund) is a trust fund which provides indemnity coverage for BCDA and the members of its Board of Directors who are either Appointive Directors or Ex-Officio Directors and its Officers who are either Board Officers, Executive Officers or Bids and Awards Committee (BAC) members (the "Beneficiaries") who

³⁹ Sec. 32 of the GCG Code of Corporate Governance for GOCCs

⁴⁰ GCG MC No. 2012-10 (Re-Issued) re: Directors' and Officers' Liability Insurance (DOLI)

are sued or included as parties to any action or proceeding against the BCDA pursuant to provisions of law, executive order or regulation or by reason of their being Directors or Officers of the BCDA.

1. *Funding.* The funding of the DOLF shall be determined by the Actuarial Advisor and payment of the benefits thereunder shall be provided for through the medium of a Fund held by a Trustee under an appropriate Trust Agreement. The contributions to the Fund so created together with gains and losses realized and unrealized plus contributed accrued liabilities, if any, shall constitute the Fund.
2. *Valuation.* The contributions to the Fund shall be actuarially determined at least once every two or three years.
3. *Administration and Management.* The DOLF shall be administered by a Trustee appointed by BCDA who shall be responsible for the general administration and management of the Fund. The BCDA Board may appoint a Board of Trustees that will coordinate with the Trustee in the implementation of the DOLF. The Trustee may seek the advice of counsel and may appoint an investment manager or managers to manage the Fund, an independent accountant to audit the Fund and an actuary to value the Fund. Fees and expenses incurred in the investing and accounting and / or actuarial audit, amendment and other services for the DOLF may be charged to the Fund.
4. *Trust Agreement.* The BCDA Board shall appoint a government bank as trustee. The powers, authorities and discretion necessary or expedient for the Trustee to perform its duties shall be expressed in the Trust Agreement executed by BCDA and the duly appointed entity.
5. *Board of Trustees.* The duties of the Board of Trustees shall consist of the following functions solely as they relate to the DOLF:
 - a. Enact and implement the rules and procedures in filling applications for benefits, for furnishing proofs necessary to establish the eligibility of the claimant and the claim.
 - b. Recommend to the Trustee the appropriate payment of the amount due to a claimant in accordance less accountabilities to BCDA.

VIII. MANAGEMENT

The Management stands as the locus of decision-making for the day-to-day affairs of BCDA. It determines BCDA'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: (i.) organizational structures that work effectively and efficiently in attaining the goals of the corporation; (ii.) useful planning, control, and risk management systems that assess risks on an integrated cross-functional approach; (iii.) information systems that are defined and aligned with an information technology strategy and the business goals of the corporation; and (iv.) a plan of succession that formalizes the process of identifying, training and selection of successors in key positions in the corporation.

8.1. *Management should be primarily accountable to the Board.* Management is primarily accountable to the Board for the operations of BCDA. As part of its accountability, it is obligated to provide the Board with complete and adequate information on the operations and affairs of BCDA in a timely manner.

8.2. *Executive Officers.* Executive officers of BCDA down to the third level shall be elected or appointed by the Board. The President & CEO shall be authorized by the Board to appoint all others, provided, that all appointments shall be on the basis of merit and fitness and all personnel action shall be in pursuance of Civil service laws, rules and regulations, except those co-terminus employees of the members of the Board.⁴¹

8.2.1. President & CEO. The President & CEO of BCDA shall have the following duties and responsibilities:

8.2.1.1. Act as Chief Executive Officer of BCDA.

8.2.1.2. Execute, administer and implement the policies and measures approved by the Board.

8.2.1.3. Direct and supervise the operations and administration of BCDA.

8.2.1.4. Represent BCDA in all dealings with offices, agencies and instrumentalities of the Government and with all persons and entities, public or private, domestic or foreign.

8.2.1.5. Direct and supervise the preparation of the agenda for the meeting of the Board, and to submit for the consideration of the Board such policies and measures necessary to carry out the purpose and objectives of the Charter.

8.2.1.6. Exercise such other powers and functions provided in the Charter and as may be vested in him by the Board.⁴²

⁴¹ Sec. 10 (b), RA 7227.

⁴² Sec. 11, R.A. 7227.

- 8.2.2. Executive Vice President. The Executive Vice President shall be the Chief Operating Officer of BCDA and shall perform the following duties and responsibilities:
- 8.2.2.1. Assist the President in the execution, administration and implementation of the policies and measures approved by the Board.
 - 8.2.2.2. Assist the President in directing and supervising the operations and administration of BCDA.
 - 8.2.2.3. Represent BCDA in all dealings with offices, agencies and instrumentalities of the government and with all persons and entities, public or private, domestic or foreign, in the absence of the President.
 - 8.2.2.4. Direct and supervise the preparation of the agenda for the meeting of the Board and submit for consideration of the Board such polices and measures as necessary to carry out the purpose and objectives of BCDA in the absence of the President.
 - 8.2.2.5. Exercise such other powers and performs such functions as may be directed by the President and/or the Board.
 - 8.2.2.6. Oversee the development of the corporate plan and ensures consistency of performance with set targets and goals.
 - 8.2.2.7. Oversee the institutionalization and implementation of an effective system for defining, reviewing and evaluating BCDA's long-term as well as short-term objectives.
 - 8.2.2.8. Oversee the formulation and recommendation of alternative plans, programs and strategies in support of the corporate objectives.
 - 8.2.2.9. Initiate and oversee the development of other sources of funds, programs and combination thereof.
 - 8.2.2.10. Oversee the provision of technical support in the continuous development and effective implementation of the bases development program.
 - 8.2.2.11. Act as BCDA spokesman on policies and programs in the absence of or under expressed authority from the President.

- 8.2.3. Vice-President. The Vice-President shall be responsible for the overall management, implementation and monitoring of specific programs and activities of each department/office under the Group. The Vice-President shall have the following duties and responsibilities:
- 8.2.3.1. Plan, direct, organize and oversee, and coordinate the entire operations of the Group in accordance with Board directives, in the Corporation's charter and its mandate.
 - 8.2.3.2. Oversee the administration of the corporate policies towards developing medium-range and long-range plans and programs.
 - 8.2.3.3. Monitor and evaluate the progress of implementation of the various programs and projects of the Group involved in baseland development, geared towards the continuing improvement and substance of the lands/properties for conversion.
 - 8.2.3.4. Conduct analysis of the corporate activities pertinent to the bases under the BCDA and its subsidiaries, the costs, operations and data forecasting and recommend to the President and the Board appropriate measures pertaining thereof.
 - 8.2.3.5. Ensure that the President, Executive Vice President and the Board of Directors are properly and regularly apprised of the progress of the programs for developing converted baselands.
 - 8.2.3.6. Transact official business, for and in behalf of the President with other government and private institutions/organizations or entities within the scope of his/her authority.
 - 8.2.3.7. Recommend to the President/Board of Directors policy advocacies on measures that will help hasten, improve and sustain the implementation of development programs towards complete bases conversion.
 - 8.2.3.8. Perform other tasks assigned by the President, Executive Vice President and the Board of Directors.
- 8.2.4. General Counsel. The General Counsel shall act as the Chief Legal Counsel of BCDA and shall perform the following duties and responsibilities:
- 8.2.4.1. Formulate plans, programs, policies and procedures for the prompt, expeditious and just disposition of

administrative cases.

- 8.2.4.2. Formulate plans, procedures for the proper legal documentation of all BCDA transactions.
- 8.2.4.3. Undertake the final review of all opinions, contracts and other legal documents prepared by the staff.
- 8.2.4.4. Formulate plans, policies and procedures on all matters concerning legal research, opinion writing and classification of legal information.
- 8.2.4.5. Handle complicated legal problems affecting BCDA.
- 8.2.4.6. Decide courses of actions to be taken in actual or impending litigations.
- 8.2.4.7. Review and approve evidence and pleadings to be filed/submitted in court.
- 8.2.4.8. Administer the formulation and drafting of contracts and other corporate documents.
- 8.2.4.9. Formulate operating plans for effective litigation proceedings.
- 8.2.4.10. Review all corporate policies and/or revisions, pleadings and contracts, modifications prepared by the Legal Counsel.

IX. MISCELLANEOUS PROVISIONS

9.1. *Severability and Construction.* Each paragraph, part, term and/or provision of this Manual shall be considered severable, and if, for any reason, any paragraph, part, term and/or provision herein is determined to be invalid or contrary to, or in conflict with, any existing or future law or regulation, such shall not impair the operation of or affect the remaining portions, sections, parts, terms and/or provisions of this Manual.

All captions herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

9.2. *Approval by the GCG.* This Manual shall be subject to the review and approval of the GCG the comments and suggestions of which shall form an integral part of this Agreement.

9.3. *Effectivity.* This Manual shall be effective fifteen (15) days after it is published in the BCDA website and from the date formal notice of the GCG approval is received.

Done this ____ day of _____ in the City of _____.

By: