

## **PRESCRIBING GUIDELINES FOR THE RATIONALIZATION OF THE GOVERNMENT CORPORATE SECTOR**

*LETTER OF INSTRUCTIONS No. 1520, February 04, 1986*

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### **TO:**

The Prime Minister and the Cabinet  
The Heads of Ministries and Other Agencies  
The Heads of Government-Owned or Controlled Corporations  
All Others Concerned

WHEREAS, Presidential Decree No. 2029 has recognized the role of the government corporate sector, and prescribed the criteria for the use by the government of the corporate form:

WHEREAS, government-owned or controlled corporations hereafter referred to as government corporations, are important participating institutions in national development, especially where greater flexibility is required so that government action may be more promptly responsive;

WHEREAS, it is necessary that the limited resources of government be utilized as efficiently, as effectively, and as economically as possible to further national development and to support the economic recovery program, for which the judicious use of the corporate form of organization is critical;

WHEREAS, specific guidelines are necessary to assure the effective implementation of the above-cited Presidential Decree;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby ordain the following:

SECTION 1. Purpose.—This Letter of Instructions provides guidelines for the rationalization of the government corporate sector by defining the areas of operation in which the corporate form may be used, as well as prescribing policy measures to achieve such rationalization.

SEC. 2. Areas of operation for government. —The government may utilize the corporate form to undertake the following economic activities, without prejudice to the alternative options of using regular line agencies, or coursing such activities through the private sector.

(a) Those which by their nature are most efficiently and effectively operated as monopolies, whether by the government or the private sector, whether in a particular given geographic area or nationwide, more specifically, public utilities and large-scale infrastructure activities generally involving large immovable and relatively indivisible physical capital requirements:

- (1) Power generation;
- (2) Railroads;
- (3) Telephone services;

- (4) The supply of potable water to built-up urban settlements; and
- (5) Large-scale gravity irrigation facilities:

(b) Those areas or activities which do not fall within the categories of natural monopolies above-cited, and in which competitive private sector participation may occur but in which the government may directly participate in the interest of national welfare and defense, more specifically;

(1) Public utilities and infrastructure activities where competitive ventures may nevertheless be possible, such as airlines, and small-scale irrigation and power generation;

(2) Large-scale income-redistributive undertakings primarily designed to benefit low income households, such as the procurement or distribution of rice and corn, and the provision of low-cost housing;

(3) Those which are highly strategic in character or of great national security significance, the operation of which would have wide-ranging economic implications and which activities are usually undertaken to provide countervailing market competition as a means of correcting or offsetting socially undesirable market developments in areas of strategic or national security significance, such as in banking, steel, or petroleum; and

(4) Those requiring very large and physically indivisible capital investments, entailing long and highly uncertain gestation periods, which the private sector is unwilling to undertake.

All government corporations covered by this issuance, including those in existence, shall conform to the financial viability requirement which is defined to mean the ability of the corporation to support its operation from its own internal cash generation without operating losses from the national government can be reasonably expected, suitable steps shall be taken to withdraw government corporations from operating in those areas which are not embraced in the above-enumerated areas of operation.

SEC. 3. Exclusion from the coverage of the LOI. The following corporations are not covered by this LOI and shall be the subject of a separate policy enunciation: (a) chartered universities, colleges, and schools, (b) municipal corporations, and (c) civic, cultural, educational, scientific, and other similar government corporations which do not engage in activities usually associated with economic gain, and which do not compete by and large with the private sector.

SEC. 4. Policy measures. The government shall observe the following policy measures and limitations, with respect to government corporations:

(a) Avoidance of regulatory authority. The corporate form shall be used for undertaking regulatory functions unless absolutely necessary. Furthermore, government corporations that are engaged in activities in direct competition with private firms shall not possess any regulatory powers over such private enterprises. In any case, a government corporation shall not be vested with quasi-judicial or adjudicatory authority.

(b) Avoidance of special privileges and, benefits. Government corporations, especially those in areas which compete directly with private sector counterparts, shall not as a general rule be entitled to undue competitive advantages and benefits, including automatic government guarantees for debts incurred, special privileges such as partial or full exemption from the payment of taxes, duties, imposts, and other charges, and automatic sources of income for which no direct service or benefits are rendered to the payers of the sources of income.

This limitation shall, however, be without prejudice to the government providing financial assistance to government corporations in the form of equity contributions, or loans preferably under terms not more favorable than those obtaining in the market, or support for subsidy or stabilization programs, in appropriate cases.

In like manner, government corporations should not be subject to undue constraints or limitations not imposed on

their private counterparts in their respective areas of operation.

Equity contributions of the national government to the government corporations shall consider the need for a reasonable return on such equity, and cash dividends of government corporations, whenever declared, shall accrue to the national government in proportion to its equity participation.

A government corporation should be able to function satisfactorily on the basis of income realized as a result of the sale of a good produced or a service rendered. The government corporate form shall be avoided if its financial viability substantially depends upon the automatic receipt of income in the form of involuntary charges imposed by the government or by the corporation, for which no corresponding service is rendered directly to the payer of the charges.

(c) Standard features common to all government corporations. Those organizational managerial and financial aspects common to all government corporations shall be standardized to the fullest extent possible, covering matters such as the general powers of the Corporation, the composition, powers and functions of the board, the powers and functions of the chairman of the board and the chief executive officer, including their relationship, the basic organizational structure, the formulation of multi-year corporate plans consistent with the national and sectoral development plans borrowing powers and limitations, standard accounting systems and other related matters.

Government corporations shall coordinate with the appropriate service-wide agencies in the design and adoption of such accounting systems.

(d) Limited liabilities. Except as may be specifically provided in the respective charters of the individual government corporations concerned, or in existing special laws, or as assumed by the national government under foreign loan agreements pursuant to law, the liability of the national government for the obligations of a government corporation, and the liability of a parent corporation for the obligations of its subsidiaries, shall be limited to the extent of their respective equity participation or contribution in such government corporations or their subsidiaries.

(e) Duplicate or overlapping functions and clientele. Government corporations shall not perform similar or identical functions and services to the same clientele nor should they be in direct competition with one another. In existing cases, the overlapping or duplicative function shall be explicitly assigned to a particular corporation as its primary if not exclusive responsibility.

(f) Management and supervision of government corporations. To ensure public accountability, there shall be effective supervision, coordination, and monitoring of government corporations, consistent with the requirements of corporate flexibility. The management of the government corporation shall be carried out by its board of directors and its chief executive officer.

The chief executive officer of the corporation shall be responsible for the implementation of policies and programs approved by the board of directors.

The board of directors of the corporation shall provide policy and program direction, and shall serve as the approving authority for operational programs prepared by the chief executive officer.

The role of the ministry in the supervision of its attached government corporations is reaffirmed to mean essentially for purposes of ensuring consistency of corporate operations and programs with sectoral policies and programs, undertaken through appropriate coordination and monitoring within the sector, and is generally limited to the attached corporations. In cases where the nature of corporate operations impinges upon the areas of

responsibility of several ministries, the boards of such corporations should include representatives from the several ministries.

The role of supra-ministerial supervision of government corporations is generally concerned with overall monitoring and coordination of the government corporate sector involving inter-ministerial and inter-sectoral issues, and is not meant to replace the basic responsibilities of ministerial supervision. Such overall supervision, coordination, and monitoring, as well as control where so authorized, is to be exercised under the leadership of the Prime Minister.

Adequate procedures shall be adopted for the evaluation, control and monitoring of the various forms of national government support to government corporations, including the extension of government guarantees, the provision of equity and budgetary support. The delineation of ministerial and supra-ministerial supervision shall in no manner restrict the overall authority of the President with respect to supervision and control.

(g) Performance criteria and evaluation. Operationally meaningful financial and economic performance criteria shall be formulated and agreed upon by the government corporations, the respective ministries and similar entities to which they are attached, and such other entities which may exercise overall supervision and/or coordination over government corporations, in order that corporate management may be fully aware of the standards and targets by which their operations will be assessed.

Such performance criteria shall include both those which are applicable to government corporations in general and those which are specific to each corporation or group of similar corporations; and shall be translated into appropriate quantitative multi-year performance targets to be aimed at by each government corporation.

SEC. 5. Restraint on the creation or acquisition of government corporations established through the Corporation Code. Restraint shall be exercised in the creation or acquisition of government subsidiary corporations established through the Corporation Code. The creation of a new government corporation, other than by special law, shall not be undertaken without prior clearance in each individual case by the President, or the Prime Minister as may be duly, authorized by the President. The creation of corporate entities through the Corporation Code by regular line agencies, including ministries and their equivalents through their officials as original incorporators, shall not be allowed.

The Securities and Exchange Commission and the heads of the government corporations concerned shall ensure compliance with the foregoing provisions. In this connection, the Securities and Exchange Commission shall require the submission of the written approval by the President or the Prime Minister as prescribed in this Section before giving due course to the application for registration of a corporation under the Corporation Code which is sought to be (a) established by a government-owned or controlled corporation, or (b) organized by individual government officials acting in their official capacities or on behalf of their agencies or corporation.

The conversion into equity of loans previously extended by a government financial institution to a privately owned corporation organized pursuant to the Corporation Code, which conversion will result in majority ownership by the lender government financial institution in the said debtor corporation, shall likewise require the prior approval of the President or, where authorized by the President, by the Prime Minister.

SEC. 6. Observance and implementation of policy measures. All heads of government corporations as well as the heads of the ministries and similar entities to which they are attached shall ensure that their programs, operations and structures conform to the policies set forth herein, within five years from the date of effectivity of this issuance. Nothing in this Section shall, however, preclude the disposition of any government corporation at an earlier time as may be determined by appropriate authorities.

Any new government corporation created, whether by special law or through the Corporation Code, adhere to the principles and policies enunciated herein.

In the ongoing review of government corporations pursuant to Letter of Instructions No. 1454, the policies enunciated in Presidential Decree No. 2029 and in this Letter of Instructions more particularly with respect to (1) financial viability and (2) areas of operation shall be observed and implemented to the fullest extent.

SEC. 7. This Letter of Instructions shall take effect immediately.

Done in the City of Manila, this 4th day of February in the year of Our Lord, Nineteen Hundred and Eighty-six.

(Sgd.) FERDINAND E. MARCOS

President

Republic of the Philippines

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