



MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

PARTIES

SECURITIES AND EXCHANGE COMMISSION, with principal office at SEC Building, EDSA, Greenhills, Mandaluyong City, represented by its **Chairperson, Hon. TERESITA J. HERBOSA**, and hereinafter referred to as the **“SEC”**;

and

GOVERNANCE COMMISSION FOR GOCCs, with principal office at 3/F Citibank Center 8741 Paseo De Roxas, Makati City, Philippines, represented by its **Chairman, Hon. CESAR L. VILLANUEVA**, and hereinafter referred to as the **“GCG.”**

WITNESSETH: THAT –

WHEREAS, Section 5.1 (a), (b) and (c) of R.A. No. 8799, otherwise known as the *“The Securities Regulation Code,”* provides that the SEC has “[j]urisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary functions and/or license or permit issued by the Government,” and the power to “[a]pprove, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications, and to regulate, investigate or supervise the activities of persons to ensure compliance”;

WHEREAS, Section 5 of Republic Act (R.A.) No. 10149, otherwise known as the *“GOCC Governance Act of 2011,”* provides that the GCG has the power and function to, among others:

- Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached;
- Review the functions of each of the GOCC and, upon determination *that there* is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President in consultation *with the Government Agency* to which such GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory function.

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Opinion...



MEMORANDUM OF AGREEMENT

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SECURITIES AND EXCHANGE COMMISSION, with principal office at SEC Building, EDSA, Greenhills, Mandaluyong City, represented by its **Chairperson, Hon. TERESITA J. HERBOSA**, and hereinafter referred to as the “**SEC**”;

and

GOVERNANCE COMMISSION FOR GOCCs, with principal office at 3/F Citibank Center 8741 Paseo De Roxas, Makati City, Philippines, represented by its **Chairman, Hon. CESAR L. VILLANUEVA**, and hereinafter referred to as the “**GCG**.”

WITNESSETH: THAT –

WHEREAS, Section 5.1 (a), (b) and (c) of R.A. No. 8799, otherwise known as the “*The Securities Regulation Code*,” provides that the SEC has “[j]urisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary functions and/or license or permit issued by the Government,” and the power to “[a]pprove, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications, and to regulate, investigate or supervise the activities of persons to ensure compliance”;

WHEREAS, Section 5 of Republic Act (R.A.) No. 10149, otherwise known as the “*GOCC Governance Act of 2011*,” provides that the GCG has the power and function to, among others:

- Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached;
- Review the functions of each of the GOCC and, upon determination *that there* is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President in consultation *with the Government Agency* to which such GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory function.

WHEREAS, Section 5(a)(6)(ii) of R.A. No. 10149 empowers the President to order the abolition or privatization of GOCCs upon the recommendation of the GCG;

WHEREAS, Section 30 of R.A. No. 10149 provides that the provisions of the Corporation Code of the Philippines shall apply suppletorily to GOCCs, insofar as they are not inconsistent therewith;

WHEREAS, Section 79 of the Corporation Code of the Philippines (Batas Pambansa Bilang 68) provides that in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained.

WHEREAS, Section 27 of R.A. No. 10149 requires that "a government agency seeking to establish a GOCC or subsidiary or an affiliate under 'The Corporation Code of the Philippines' shall submit its proposal to the GCG for review and recommendation to the President for approval before registering the same with the SEC, and the SEC shall not register the articles of incorporation and bylaws of a proposed GOCC or subsidiary or affiliate, unless the application of registration is accompanied by an endorsement from the GCG stating that the President has approved the same;

WHEREAS, even with the enactment of R.A. No. 10149, the SEC continues to have jurisdiction over Nonchartered GOCCs insofar as reportorial requirements are concerned;

WHEREAS, there is both a legal and administrative necessity for the GCG and the SEC to coordinate all their efforts in regulating Nonchartered GOCCs in accordance with R.A. No. 10149 and the Corporation Code of the Philippines;

NOW, THEREFORE, the foregoing premises considered, and subject to the terms and conditions as herein specified, the Parties hereby mutually agree as follows:

1. **Mutual Assistance and Close Collaboration.** – The Parties shall endeavour to provide mutual assistance and collaborate closely in the expedient release of official documents requested by the other party, and in the overall exercise of their regulatory powers and functions over Nonchartered GOCCs¹ pursuant to R.A. No. 10149 and B.P. Blg. 68, and submit joint recommendations to the President when required and necessary. The expedient release of official documents requested by either party shall be without prejudice to pertinent laws, rules, and regulations prohibiting disclosure of documents or information or otherwise requiring their confidentiality.

The Parties shall work hand in hand especially in cases where the President has ordered the creation of Technical Working Groups concerning modifications in the corporate structure of Nonchartered GOCCs.

2. **Designation of Authorized Representatives.** – The Parties shall, from time to time, designate members of both Agencies, who shall be charged with coordinating the submissions of documentary and other requirements, and the processing of applications concerning the following changes involving Nonchartered GOCCs:

¹ Annex "A" hereof.

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- a. Amendment of Articles of Incorporation and By-laws;
- b. Extension of corporate term;
- c. Shortening of corporate term;
- d. Increase in Capital Stock;
- e. Decrease in Capital Stock;
- f. Abolition/Dissolution;
- g. Revival or reinstatement of Nonchartered GOCCs with revoked Certificates of Registration;
- h. Merger;
- i. Consolidation;
- j. Privatization; and
- k. Establishment of a GOCC, Subsidiary or Affiliate as defined under R.A. No. 10149.

3. **Rule on Actions on Nonchartered GOCCs.** – The Parties agree that the SEC shall act on the following changes involving Nonchartered GOCCs, only upon presentation to the SEC of an endorsement from the GCG stating that the President has approved the same, provided that the requirements under the Corporation Code and other pertinent laws and SEC rules have been faithfully complied with:

- a. Extension of corporate term
- b. Shortening of corporate term
- c. Abolition/Voluntary Dissolution
- d. Merger
- e. Consolidation
- f. Privatization
- g. Revival or reinstatement of Nonchartered GOCCs with revoked Certificates of Registration
- h. Establishment of a GOCC, Subsidiary or Affiliate as defined under R.A. No. 10149

4. **Rule on Nonchartered GOCCs Ordered Dissolved by the President.** – Where Nonchartered GOCCs, which are wholly-owned or 2/3 of whose authorized capital stock are owned by the Republic of the Philippines directly or through instrumentalities, are ordered abolished or dissolved by the President pursuant to Section (5)(a)(6)(ii) of R.A. No. 10149, the aforesaid order of the President shall be deemed by the SEC to be sufficient compliance with the requirement of 2/3 stockholders' vote under Title XIV of the Corporation Code. Towards this end, the SEC shall issue the appropriate regulations governing the abolition or dissolution of such Nonchartered GOCCs.

5. **Amendments.** – Any modification, alteration, addition or changes in the terms and conditions hereof shall not be binding on the Parties, unless the same are made in writing and duly executed by the Parties concerned.

6. **Separability.** – If for any reason, any section or provision of this Memorandum of Agreement is declared to be invalid, the other sections or provisions thereof which are not affected thereby, shall continue in full force and effect.

7. **Effectivity.** – This Memorandum of Agreement shall take effect upon the execution by the Parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 8th day of April 2014 at Makati City, Philippines.

Handwritten signatures and initials on the left margin:
 - A black ink signature at the top.
 - A blue ink signature in the middle.
 - Blue ink initials "S. S." and "h." below the blue signature.
 - A black ink signature at the bottom, appearing to read "Mr. Frank Z. ...".

**GOVERNANCE COMMISSION FOR
GOCCs**

**SECURITIES AND EXCHANGE
COMMISSION**

By:



HON. CESAR L. VILLANUEVA
Chairman

By:



HON. TERESITA J. HERBOSA
Chairperson

Signed in the Presence of:




HON. MA. ANGELA E. IGNACIO
Commissioner
GOVERNANCE COMMISSION FOR GOCCS



HON. MA. JUANITA ELEGIR-CUETO
Commissioner
SECURITIES AND EXCHANGE COMMISSION



HON. RAINIER B. BUTALID
Commissioner
GOVERNANCE COMMISSION FOR GOCCS



HON. MANUEL B. GAITE
Commissioner
SECURITIES AND EXCHANGE COMMISSION

HON. ELADIO M. JALA
Commissioner
SECURITIES AND EXCHANGE COMMISSION



HON. ANTONIETA F. IBE
Commissioner
SECURITIES AND EXCHANGE COMMISSION

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Makati City) - s.s.


BEFORE ME, a Notary Public for and in the above-indicated locality, this
_____ day of APR 08 2014 2014, personally appeared and exhibited to me their
respective IDENTIFICATION DOCUMENTS herein below described:



| <u>NAME</u> | <u>VALID LICENSE/PASSPORT NO., DATE/PLACE OF ISSUE</u> |
|---------------------|---|
| Cesar L. Villanueva | <u>Passport No. EB6343946, 14 Sep 2012/DFA Pampanga</u> |
| Teresita J. Herbosa | <u>Passport No. OE0003100, 16 Jun 2011/DFA Manila</u> |

all known to me and known to be the same persons who executed the foregoing instrument consisting of five (5) pages including this one, which they signed and acknowledged before me as their own free and voluntary act and deed.

IN WITNESS WHEREOF, I have set my hand and affixed my notarial seal on the date and at the place first indicated above.

Doc. No. 32 ;
Page No. 8 ;
Book No. I ;
Series of 2014.


ANGEL T. ALAMEDA
Commission No. 201
Notary Public for Makati City
Until December 31, 2015
6th Floor, Citibank Center
8741 Paseo de Roxas, Makati City
Roll No. 62583 / 04-29-13
PTR No. 4230686 / 01-03-14 / Makati City
IBP No. 947538 / 01-03-14 / Quezon City


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ANNEX "A"
List of Nonchartered GOCCs

1. Alabang Sto. Tomas Development Inc. (ASDI)
2. APO Production Unit, Inc. (APO-PUI)
3. Anchor Estate, Inc. (AEI)
4. Aviation Services and Training Institute
5. Batangas Land Company, Inc.
6. Batong Buhay Gold Mines, Inc.
7. BCDA Management and Holdings, Inc.
8. Bukidnon Forest, Inc.
9. Calauag Quezon Province Integrated Coconut Processing Plant
10. CDCP Farms Corporation (CDCP-FC)
11. Clark Development Corporation
12. Clark International Airport Corporation
13. Clark Polytechnic Development Foundation (CPDF)
14. Corregidor Foundation, Inc.
15. DBP Data Center, Inc.
16. DBP Leasing Corporation
17. DBP Management Corporation
18. DISC Contractors, Builders and General Services, Inc. (DCBGS)
19. First Cavite Industrial Estate, Inc.
20. First Centennial Clark Corporation (FCCC)
21. Food Terminal, Inc. (PMO)
22. G.Y. Real Estate, Inc.
23. GSIS Family Bank
24. GSIS Mutual Fund, Inc. (GSIS-MFI)
25. GSIS Properties, Inc. (GSIS-PI)
26. HGC Subic Corporation
27. Inter-Island Gas Service, Inc (IIGSI)
28. Integrated Feedmills Manufacturing Corporation
29. Intercontinental Broadcasting Corporation (IBC)
30. John Hay Management Corporation
31. Kamayan Realty Corporation
32. Land Bank Countryside Development Foundation, Inc.
33. LBP Insurance Brokerage, Inc.
34. LBP Leasing Corporation
35. LBP Resources and Development Corporation
36. LWUA Consult, Inc.
37. Marawi Resort Hotel, Inc.
38. Masaganang Sakahan, Inc.
39. Meat Packing Corporation of the Philippines (MPCP)
40. Metro Transit Organization, Inc. (MTOI)
41. National Agri-Business Corporation
42. National Sugar Development Company (NASUDECO)
43. NDC-Philippine Infrastructure Corporation
44. NIA Consult, Inc.
45. North Davao Mining Corporation
46. North Luzon Railway Corporation
47. Northern Foods Corporation (PMO)

Dr. Jesiel P. Ruy-Cant

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- 48. Panay Railways Inc. (PMO)
- 49. Paskuhan Development, Inc. (PDI)
- 50. PEA Tollway Corporation
- 51. People's Credit and Finance Corporation
- 52. Philippine Agricultural Development and Commercial Corporation
- 53. Philippine Centennial Expo '98 Corp. (EXPO-FILIPINO)
- 54. Philippine Forest Corporation
- 55. Philippine Mining Development Corporation (formerly NRMDC)
- 56. Philippine National Construction Corporation
- 57. Philippine Postal Savings Bank, Inc.
- 58. Philpost Leasing and Financing Corporation (PLFC)
- 59. Phividec Panay Agro-Industrial Corp. (PMO)
- 60. Pinagkaisa Realty Corporation
- 61. PITC Pharma, Inc.
- 62. PNOC Alternative Fuel Corp.
- 63. PNOC Development and Management Corporation
- 64. PNOC Exploration Corporation
- 65. PNOC Renewables Corporation
- 66. Poro Point Management Corporation
- 67. Social Housing Finance Corporation
- 68. Southern Utility Management and Services, Inc. (SUSMI)
- 69. Tierra Factors Corporation (TFC)
- 70. Traffic Control Products Corporation (TCPC)
- 71. Zamboanga National Agricultural College - Rubber Estate Corporation

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