

BOY SCOUTS OF THE PHILIPPINES
National Office
Manila

01 April 2014

NATIONAL OFFICE MEMORANDUM
NUMBER 30 s. 2014

TO : **Regional Scout Directors, Council Scout Executives and Officers-In-Charge**

SUBJECT : **CLASSIFYING THE BOY SCOUTS OF THE PHILIPPINES AS *SUI GENERIS GOCCS***

The Governance Commission, through Memorandum Order No. 2013-42, classified the Boy Scouts of the Philippines (BSP) together with the Girl Scouts of the Philippines (GSP) as ***SUI GENERIS GOCCs***.

The Governance Commission (GCG) believes that while BSP is GOCCs by operation of law and pursuant to jurisprudence, falling within the regulatory jurisdiction of the GCG and the provisions of R.A. No. 10149, the BSP together with GSP is properly classified as ***SUI GENERIS GOCCs*** for the following reasons:

- The BSP possessed mixed characteristics pertaining to both private corporations and GOCCs;
- The BSP predecessors were private entities. We began as a chapter of the Boy Scouts of America.
- While BSP is created to serve “public needs/interests and objectives” and in furtherance of the State’s objective for the promotion and development of the youth towards nation building, we are not receiving funding from the Government.
- While BSP is GOCC, we are at the same time, independent, non-political and voluntary organization.
- The principle of volunteerism, which is not normally found in other GOCCs, is at the core and foundation of the membership of the BSP.

Consequently, the Governance Commission considers that the executive board of the Boy Scouts of the Philippines is an embodiment of the will of our volunteer-members as products of an electoral process wherein members in the millions get to elect the various representatives to the executive board.

On the basis of the foregoing, the Governance Commission ruled that the application of the provisions of R.A. No. 10149 on the selection and appointment of the members of the executive board will not be made applicable to the Boy Scouts of the Philippines. However, this does not exempt the officers and employees of the BSP to be subject to the Compensation and Position Classification System (CPCS) which the GCG will recommend to the President for his approval. Likewise, members of the executive board are still subject to the guidelines of the GCG on Director’s compensation and performance-based incentives.

Attached herewith is the letter of Governance Commission (GCG) dated 21 March 2014 and GCG Memorandum Order No. 2013-42.

For your information, guidance and widest dissemination.


WENDEL E. AVISADO
SVP and Acting Secretary General



GOVERNANCE COMMISSION

3/F, Citibank Center, 8741 Paseo De Roxas, Makati City, Philippines 1226



21 March 2014

HON. JEJOMAR C. BINAY
Vice-President of the Philippines
BSP National President

ATTY. WENDELL E. AVISADO
Senior Vice President and Acting Secretary General

BOY SCOUTS OF THE PHILIPPINES
181 Natividad Almeda-Lopez St.
Ermita, Manila

RE : **BSP'S CLASSIFICATION AS A SUI GENERIS GOCC**

Dear Vice-President Binay and Secretary General Avisado,

We write this letter to formally inform you about the ruling of the Governance Commission classifying the **BOY SCOUTS OF THE PHILIPPINES (BSP)** and the **GIRL SCOUTS OF THE PHILIPPINES (GSP)** as *sui generis* GOCCs, ***insofar as it covers the election and constitution of their Governing Boards.***

You will recall that previously, the GCG had already sent a letter dated 23 May 2012 to the BSP regarding BSP's status as a "Government Owned or Controlled Corporation" (GOCC), citing the Supreme Court ruling in *Boy Scouts of the Philippines v. Commission on Audit*,¹ which affirmed the status of the BSP as a "government owned or controlled corporation with an original charter and as an instrumentality of the government."² At the same time, the Supreme Court also acknowledged the BSP's unique characteristic as a "*mixed type of entity, combining aspects of both private and public entities.*"³

In the same letter to the BSP, the Commission likewise acknowledged the peculiar nature of the BSP as a government entity, to which end the Commission "endeavor[ed] to work with the BSP to effectively address issues and concerns on Republic Act 10149", *The GOCC Governance Act of 2011*.

BSP AND GSP AS SUI GENERIS ENTITIES

A closer look at the BSP and GSP in terms of nature, historical origins, board structure, international affiliations, and origin of funds would show that the said entities possess characteristics found in both private and government corporations such that the BSP and GSP may properly be classified as *sui generis* (i.e. in a class of their own).

¹G.R. No. 177131, 7 June 2011.

²*Boy Scouts of the Philippines versus Commission on Audit*, G.R. No. 177131, 7 June 2011, 147 SCRA 671 at page 178.

³*Boy Scouts of the Philippines versus G*

In the case of *Boy Scouts of the Philippines vs. COA*⁴ while the Supreme Court ruled that the BSP is indeed a GOCC, it also pointed out that the BSP has aspects which pertain to private corporations:

While the BSP may be seen to be a **mixed type of entity, combining aspects of both public and private entities**, we believe that considering the character of its purposes and its functions, the statutory designation of the BSP as "a public corporation" and the substantial participation of the **Government** in the selection of members of the National Executive Board of the BSP, the BSP, as presently constituted under its charter, is a government-controlled corporation within the meaning of Article IX. (B) (2) (1) of the Constitution.

Thus, the Commission classified the BSP and GSP as *sui generis* GOCCs for the following reasons:

- a. The BSP and GSP possess mixed characteristics pertaining to both private corporations and GOCCs;⁵
- b. The BSP and GSP's predecessors were private entities. The BSP began in the Philippines as a chapter of the Boy Scouts of America, while the GSP was initially organized by the American Army and Navy families in various parts of the Philippines and also registered directly with the Girl Scouts of America;⁶
- c. While BSP and GSP were created to serve "public needs/ interests and objectives" and in furtherance of the State's objective for the promotion and development of the youth towards nation building, they are not receiving funding from the Government;
- d. While BSP and GSP are GOCCs, they are at the same time, independent, non-political, and voluntary organizations;
- e. The principle of volunteerism, which is not normally found in other GOCCs, is at the core and foundation of the membership of both BSP and GSP; and
- f. The respective Governing Boards of BSP and GSP are an embodiment of the will of its volunteers-members as they are products of an electoral process wherein members in the thousands from all regions of the country get to elect their various representatives to the Governing Boards, which number no less than thirty (30) each;⁷

APPOINTMENTS AND SELECTION PROCESS UNDER R.A. No. 10149 INCOMPATIBLE WITH BSP AND GSP.

As a matter of policy, the GCG has adopted the rule that upon the enactment of R.A. No. 10149, provisions to the contrary, of applicable laws, corporate charters, AOI and BL of all covered GOCC have effectively been repealed. Under section 15 of R.A. No. 10149, the authority of making appointments to the Governing Boards of GOCC will be vested in the President of the Philippines. Section 15 provides thus:

⁴ G.R. No. 168964, 23 January 2006.

⁵ Id.

⁶ http://scouts.org.ph/?page_id=16, http://www.girlscouts.org.ph/aboutus_history.html

SEC. 15 Appointments of the Board of Directors/Trustees of GOCCs.
– **An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.**

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees and shall cause the creation of search committees to achieve the same. All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule as defined under this Act and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC. The GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the number of directors/trustees to be appointed. In the event that the President does not see fit to appoint any of the nominees included in the shortlist, the President shall ask GCG to submit additional nominees.⁶

Therefore, by clear mandate of the law, the charters of GOCCs are hereby repealed by R.A. No. 10149. Members of their Governing Boards will no longer be elected by their stockholders, but will instead be appointed by the President of the Philippines, from a shortlist submitted by GCG. More specifically, the GCG has adopted the policy in its various circulars and issuances that all positions in the various governing boards, which are not *ex-officio*, are deemed appointive positions by virtue of R.A. No. 10149.

The selection process of the governing Board of the BSP and the GSP, involves the organization as a whole, composed of 1,364,210 and 671,267 members respectively, where the said members of the organization play a pivotal role in “appointing” and selecting a considerable number of members of the Board (e.g. Regional Chairpersons-Board Members shall be elected by the regional members belonging to the same region, in the case of the GSP, and, regional chairmen of the scouts regions elected by the representatives of the corresponding local scouts councils, in the case of the BSP).

The provision on appointment and selection of the governing boards found in Section 15 of R.A. No. 10149 is clearly incompatible with the composition of the BSP and the GSP as independent, voluntary, non-political institutions. To have the set of members of BSP and GSP’s governing boards below appointed by the President of the Philippines would violate the will of the BSP and GSP’s membership composed of private individual volunteers.

Likewise, the appointment process under R.A. No. 10149, unduly impinges upon the tenets of independence and neutrality which is at the core of BSP’s and GSP’s existence as scouting entities.

In sum, BSP and GSP were created as auxiliaries of the government to further a constitutionally enshrined state function of promoting the well being of the youth, and yet no public funds were dispersed for said functions. Both entities do not receive government funding and are financed primarily by contributions of members who voluntarily elect to join the organization, as well as donations from its international affiliates. The application of the provisions of R.A. No. 10149, specifically on the appointment of the members of its governing board, would necessarily violate the BSP’s and GSP’s core principles of independence, volunteerism and being non-political. The applicability to BSP and GSP of the

selection and nomination process of the GCG under R.A. No. 10149 will also prove to be a very burdensome and complicated process considering the peculiar composition of their respective Governing Boards.

APPLICABILITY OF THE CPCS TO BSP AND GSP

It should be noted that in all other matters, both BSP and GSP continue to be bound by the provisions of R.A. No. 10149 and under the supervision and oversight of the Governance Commission, and bound by the terms of the organic documents issued (the Ownership and Operations Manual, the Code of Corporate Governance, and the Fit and Property Rule), and all other memoranda and issuances pertaining to the GOCC Sector.

One of the core mandates of the Commission is to “develop a Compensation and Position Classification System (CPCS) which shall apply to **all officers and employees** of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.”⁹ Through this CPCS, all positions “shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the [CPCS], which shall [also] be prepared by the GCG and approved by the President.”¹⁰

Since BSP and GSP are clearly GOCCs as explained above, the Commission may still include said GOCCs within the coverage of the CPCS.

We have also attached for your reference the *GCG Memorandum Order No. 2013-42* dated or November 2013, signed by the Commission *en banc*, embodying the above explained ruling.

Very truly yours,

BY AUTHORITY OF THE COMMISSION:


CESAR L. VILLANUEVA
Chairman


MA ANGELA E. IGNACIO
Commissioner


RAINIER B. BUTALID
Commissioner

Cc: Executive Secretary PAQUITO N. OCHOA, JR.
DOF Secretary CESAR V. PURISIMA
DBM Secretary FLORENCIO B. ABAD
DepEd Secretary ARMIN A. LUISTRO

⁹ Sec. 8, R.A. No. 10149.

¹⁰ Sec. 9, R.A. No. 10149.



Office of the President of the Philippines
GOVERNANCE COMMISSION
FOR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS
3/F, Citibank Center, 8741 Paseo De Roxas, Makati City, Philippines 1226

MEMORANDUM ORDER NO. 2013- 42

CLASSIFYING THE BOY SCOUTS OF THE PHILIPPINES (BSP) and the GIRL SCOUTS OF THE PHILIPPINES (GSP) AS *SUI GENERIS* GOCCS

WHEREAS, the **BOY SCOUTS OF THE PHILIPPINES (BSP)** is a chartered,¹ non-stock, non-profit Government-Owned-or-Controlled-Corporation (GOCC) as held by the Supreme Court in the cases of *Boy Scouts of the Philippines v. NLRC*² and *Boy Scouts of the Philippines v. Commission on Audit*,³

WHEREAS, the **GIRL SCOUTS OF THE PHILIPPINES (GSP)** is a non-stock, non- profit GOCC pursuant to its charter⁴ and has features similar to the BSP;

WHEREAS, while BSP and GSP are GOCCs by operation of law and pursuant to jurisprudence, falling within the regulatory jurisdiction of the GCG and the provisions of R.A. No. 10149, the BSP and GSP may be properly classified as *SUI GENERIS* GOCCs for the following reasons:

- a. They possessed mixed characteristics pertaining to both private corporations and GOCCs;
- b. Their predecessors were private entities. The BSP began in the Philippines as a chapter of the Boy Scouts of America, while the GSP was initially organized by the American Army and Navy families in various parts of the Philippines and also registered directly with the Girl Scouts of America;
- c. While BSP and GSP were created to serve "public needs/ interests and objectives" and in furtherance of the State's objective for the promotion and development of the youth towards nation building, they are not receiving funding from the Government.
- d. While BSP and GSP are GOCCs, they are at the same time, independent, non-political, and voluntary organizations.
- e. The principle of volunteerism, which is not normally found in other GOCCS, is at the core and foundation of the membership of both BSP and GSP.

¹ Republic Act No. 7278, AN ACT AMENDING COMMONWEALTH ACT NO. 111 AS AMENDED BY PRESIDENTIAL DECREE NO. 460, ENTITLED "AN ACT TO CREATE A PUBLIC CORPORATION TO BE KNOWN AS THE BOY SCOUTS OF THE PHILIPPINES AND TO DEFINE ITS POWERS AND PURPOSES," BY STRENGTHENING THE VOLUNTEER AND DEMOCRATIC CHARACTER OF THE BOY SCOUTS OF THE PHILIPPINES AND FOR OTHER PURPOSES, 24 March 1992.

² 651 SCRA 146 (2011).

³ G.R. No. 80767, April 22, 1991, 196 SCRA 176

⁴ Republic Act No. 10073, AN ACT INSTITUTING THE NEW GIRL SCOUTS OF THE PHILIPPINES CHARTER, PENALIZING VIOLATIONS THEREOF AND FOR OTHER PURPOSES, 27 July 2009.

WHEREAS, the respective governing boards of BSP and GSP are an embodiment of the will of its volunteer-members as they are products of an electoral process wherein members in the thousands get to elect the various representatives to the governing Board;

WHEREAS, Section 5(b) of Republic Act (R.A.) No. 10149 or *The GOCC Governance Act of 2011*, empowers the **GOVERNANCE COMMISSION FOR GOCCs (GCG)** to "[C]lassify GOCCs into: (1) Developmental/Social Corporations; (2) Proprietary Commercial Corporations; (3) Government Financial, Investment and Trust Institutions; (4) Corporations with Regulatory Functions; and (5) Others as may be classified by the GCG, without prejudice to further subclassifications in each category and/or any other classification based on parameters as it may find relevant or material such as, but not limited to, industry type. The classification shall guide the GCG in exercising its powers and functions as provided therein";

WHEREAS, the application of the provisions of R.A. No. 10149 on the selection and appointment of members of the governing boards of GOCCs will weaken the core principles of volunteerism, independence, and neutrality inherent in the BSP and GSP;

WHEREAS, since BSP and GSP are GOCCs by operation of law and jurisprudence, the Commission may still include BSP and GSP within the coverage of the Compensation Position and Classification System (CPCS) that it is developing pursuant to R.A. No. 10149, and the members of their respective Governing Boards, can still be subjected to the Compensation Framework for Directors applicable to all GOCCs;

NOW, BE IT –

RESOLVED, that BSP and GSP are hereby classified as *SUI GENERIS* GOCCs.

RESOLVED FURTHER, that the selection and nomination process of the GCG for Appointive Directors will not be made applicable to BSP and GSP;

RESOLVED FURTHER, that the officers and employees of BSP and GSP are still subject to the CPCS that the GCG will recommend to the President for his approval;


RESOLVED FINALLY, that the Members of the Governing Boards of BSP and GSP are still subject to the guidelines of the GCG on Directors' compensation and performance-based incentives.

DONE, in the City of Manila, this 5th day of November in the year of our Lord, Two Thousand Thirteen


CESAR L. VILLANUEVA
Chairman


CESAR V. PURISIMA
DOF Secretary
009703


MA. ANGELA E. IGNACIO
Commissioner


FLORENCIO B. ABAD
DBM Secretary


RAINIER B. BUTALID
Commissioner