

## MANUAL OF CORPORATE GOVERNANCE

It is the policy of the John Hay Management Corporation (JHMC) 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 JHMC 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 are dissolved after they have served the purpose specified for their creation. Membership to Ad Hoc Committee may include representatives from Management.
  - 1.1.2 *BCDA Group* – An aggrupation consisting of BCDA and its subsidiaries namely, BCDA Management and Holdings, Inc. (BMHI), Clark Development Corporation (CDC), Clark International Airport Corporation (CIAC), John Hay Management Corporation (JHMC), North Luzon Railways Corporation (NORTHRAIL), Poro Point Management Corporation (PPMC) and such other subsidiaries as may hereafter be formed, unified under a single vision and for the purpose of achieving a common goal. The BCDA Group aims to foster development that is sustainable, synergistic and complementary with each member leveraging on their respective strengths and specialties.
  - 1.1.3 *Board of Directors* – The collegial body that exercises the corporate powers of JHMC, as specified in its Articles of Incorporation and By-Laws registered under the Securities and Exchange Commission (SEC) with SEC Registration No. ASO93-04846. It is charged with the functions of governing and conducting the business of JHMC and monitoring Management.
  - 1.1.4 *Charter* – The Articles of Incorporation and By-Laws of JHMC, a copy of which is attached hereto as Annex “A” and hereby made an integral part hereof.
  - 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 JHMC or performs any work related to its operation.
- 1.1.8 *Independent Board Member* – A Member of the Board who has no relationship with JHMC 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 JHMC's operations. It helps JHMC 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 JHMC'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.
- 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 JHMC programs identified under its charter, allied laws and executive issuances and investors providing external capital to BCDA and JHMC 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 JHMC.

## II. COMMITMENT TO PRINCIPLES OF GOOD CORPORATE GOVERNANCE

- 2.1. *JHMC as an Active Partner of the Government in National Development.* JHMC 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 JHMC.* The corporate governance framework for JHMC shall be governed by the following principles:
- 2.2.1. JHMC 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 JHMC, including its financial condition, performance, ownership, and governance.
- 2.2.3. The strategic guidance of JHMC 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. JHMC 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 JHMC shall be fostered.

- 2.2.6. JHMC recognizes its corporate responsibility for the common good of society.
- 2.2.7. Active cooperation by and between the BCDA Group, affiliates, subsidiaries and stakeholders in creating wealth, jobs, and the sustainability of a financially sound enterprise shall be encouraged.
- 2.3 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 every effort necessary to create awareness of such within JHMC.
- 2.4 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 JHMC. 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.
- 2.4.1. Determination of Conflict of Interest. A conflict of interest exists when a Board Member or officer of JHMC:
- 2.4.1.1 Supplies or is attempting or applying to supply goods or services to the BCDA Group;
  - 2.4.1.2 Supplies or is attempting to supply goods, services or information to an entity in competition with the BCDA Group;
  - 2.4.1.3 By virtue of his office, acquire or is attempting to acquire for himself a business opportunity which should belong to the BCDA Group;
  - 2.4.1.4 Is offered or receive consideration for delivering the BCDA Group's business to a third party; and
  - 2.4.1.5 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.
- 2.4.2. 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.

- 2.4.3. *Voidable Contracts.* A contract of JHMC with one or more of its Board Members or officers is voidable, at the option of JHMC, unless all the following conditions are present:
- 2.4.3.1 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;
  - 2.4.3.2 The vote of such director was not necessary for the approval of the contract;
  - 2.4.3.3 The contract is fair and reasonable under the circumstances; and
  - 2.4.3.4 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.

Any Board Member who enters into a transaction or contract grossly disadvantageous to the government shall also be liable for violation of Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) and the Code of Ethical Standards for Public Officials (Republic Act No. 6713).

- 2.4.4. *Liability of Board Members.* Where a Board Member, by virtue of his/her office, acquires a business opportunity which should belong to the BCDA Group, thereby obtaining realized and unrealized profits and/or benefits including, but not limited to, the share in the profits, incentives of members of the Board or Officers in excess of that authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where BCDA or JHMC is a stockholder or investor, and any benefit from the performance of members of the Board or Officers of the Corporation acting for and in behalf of BCDA and JHMC in dealing with its properties, investments in other corporations, management of subsidiaries and other interest 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. These profits are to be held in trust by such member of the Board or Officer for the exclusive benefit of the BCDA and JHMC. 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 the Anti-Graft and Corrupt Practices Act and the Code of Ethical Standards for Public Official.

2.5 *No Gift Policy.* JHMC shall adhere to the highest form of ethical standards. The JHMC Board of Directors, Officers, Managers and employees shall demonstrate fairness, professionalism and deliver quality services without expectations of any undue favor or reward.

2.5.1. *No Gift Policy.* JHMC adopts a No Gift Policy.<sup>1</sup> The Chairman and Members of the Board, Officers, Managers and Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or use, or anything of monetary value (“gift”) from a person, group, association, or juridical entity, whether from the public or the private sectors, at any time, on or off the work premises, in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of, their office, where such gift:

2.5.1.1. Would be illegal or in violation of law.

2.5.1.2. Is part of an attempt or agreement to do or refrain from doing anything in return.

2.5.1.3. Has a value beyond what is normal and customary in the business of JHMC.

2.5.1.4. Is being made to influence the Chairman and Members of the Board, Officers, Managers and Employees’ actions as such.

2.5.1.5. Could create the appearance of a conflict of interest.

2.6 *Relations with Stakeholders.* JHMC recognizes the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between JHMC and its stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The following are the JHMC's Stakeholders/Beneficiaries and how they are affected by JHMC’s mandate:

1. Office of the President/National Government

- Economic, Social and Financial Gains. JHMC's fulfillment of its mandate allows the government to gain economic and social benefits from it.

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<sup>1</sup> Adopted from GCG Memorandum Circular No. 2012-12 or “No Gift Policy” of the Governance Commission for GOCCs (GCG).

2. Congress

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

3. BCDA

- JHMC is a subsidiary of BCDA, and the operating and implementing arm of BCDA for Camp John Hay.

4. Local Government Units (LGUs)/National Agencies

- Educational Assistance. JHMC improves the quality of education in barangays by coordinating with the Department of Education on the needs of the schools located in the John Hay Reservation Area.
- Economic Assistance. JHMC improves the quality of life and gives dignity to the residents of the barangays in Camp John Hay.
- Improved Economic Conditions. JHMC undertakes infrastructure projects which increase economic opportunities for the communities, thus benefiting the LGUs.

5. BCDA Subsidiaries

- Funding Source and Policy Directions. JHMC coordinates with other BCDA subsidiaries in creating development, wealth and jobs.

6. Environment

- Environment and Forest Stewardship. JHMC provides programs for forest watershed management.

7. Employees

- Professional Growth and Development. JHMC provides its employees with opportunities for professional growth and development.

8. Tourists

- Eco-Tourism. JHMC develops Camp John Hay into a premier tourist destination.

9. Investors/Joint Venture (JV) Partners/Lesseees/ Locators

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- Investment Opportunities. JHMC 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.
- JHMC provides a one-stop action center for the processing of permits.

#### 10. Suppliers

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

#### 11. Socio-Civic Organizations.

- Civil Society Participation. Socio-civic organizations or members of the “civil society” are invited to participate in the activities in Camp John Hay which include, among others, the sanitation cutting and pruning of pine trees, tree planting, clean-up drives, the adopt-a-tree program, and the adopt-an-estero program, etc.

#### 2.6.1. *Resolution of Conflicts*

2.6.1.1. *In case of conflict between JHMC’s stakeholders in the course of JHMC’s fulfillment of its main mandate.* JHMC shall be guided by the fulfillment of its mandate and the mandate of BCDA. In case of conflict between the development/ conversion of Camp John Hay which will affect LGUs and displace informal settlers, JHMC will decide in favor of the fulfillment of its principal mandate and the mandate of BCDA, while adopting mitigating measures to lessen the negative impact on its other stakeholders.

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

2.6.3 *Report on Stakeholder Relations.* JHMC shall communicate with investors, stakeholders and the public at large on their stakeholder policies and provide information on their effective implementation. JHMC shall allow its stakeholder reports to be independently scrutinized in order to strengthen their credibility.

2.6.4. *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. JHMC 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.

## 2.7 Disclosure and Transparency

JHMC 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 JHMC, including its financial situation, performance, ownership, and governance.

2.7.1. *Disclosure on Material Information.* JHMC shall make a disclosure on, among others, the following material information:

2.7.1.1. *Objectives and their fulfillment.* Corporate objectives shall be made clear to all stakeholders, investors and the general public. JHMC shall report on how it fulfills its objectives by disclosing key performance indicators.

2.7.1.2. *Material risk factors and measures taken to manage such risks.* JHMC shall establish sound internal risk management systems to identify, manage, control and report on risks. Appropriate disclosure by JHMC 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.

2.7.1.3. *Financial assistance, including guarantees, received from the government and commitments made on behalf of JHMC.* To give a fair and complete picture of JHMC's financial situation, the mutual obligations, financial assistance or risk sharing mechanisms between the government and JHMC shall be appropriately disclosed. Disclosure shall include details on any government grant or subsidy received by JHMC, any guarantee granted by the government to JHMC

for its operations, as well as any commitment that the government undertakes for and on behalf of JHMC.

- 2.7.1.4 *Material transactions with related entities.* Transactions between JHMC 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.

JHMC 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.

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

2.7.2.1. Institutional Matters:

2.7.2.1.1. The latest version of the JHMC Charter.

2.7.2.1.2. Government Corporate Information Sheet (GCIS) as mandated by the GCG in its Memorandum Circular No. 2012-01.

2.7.2.2. Board and Officers:

2.7.2.2.1. Complete Listing of the Directors and Officers with attached resume and their membership in Board Committees.

2.7.2.2.2. Complete compensation package of all the board members and officers.

2.7.2.2.3. Information on Board Committees and their activities.

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

2.7.2.3. Financial Matters:

- 2.7.2.3.1. Their latest annual audited financial and performance report within thirty (30) days from receipt of such report.
- 2.7.2.3.2. Audited financial statements in the immediate past five (5) years.
- 2.7.2.3.3. Quarterly, annual reports and trial balance.
- 2.7.2.3.4. Current Corporate Operating Budget (COB).
- 2.7.2.3.5. Local and foreign borrowings.
- 2.7.2.3.6. Government subsidies and net lending.
- 2.7.2.3.7. All borrowings guaranteed by the government.
- 2.7.2.3.8. Any material risk factors and measures taken to manage such risk.
- 2.7.2.3.9. Performance Evaluation System (PES).

2.7.2.4. Governance Matters:

- 2.7.2.4.1. Charter Statement/ Mission-Vision Statements.
- 2.7.2.4.2. Performance Scorecards and Strategy Map.
- 2.7.2.4.3. Organizational Chart.
- 2.7.2.4.4. Manual of Corporate Governance.
- 2.7.2.4.5. Corporate Social Responsibility (CSR) Statement.
- 2.7.2.4.6. 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.<sup>2</sup>

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<sup>2</sup> Sec. 43, GCG Memorandum Circular 2012-07, "Code of Corporate Governance for GOCCs"

- 2.7.3. *Development of internal audit procedures.* JHMC 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.
- 2.7.4. *Conduct of an independent external audit based on international standards.* JHMC shall undergo a periodic independent external audit based on international standards.<sup>3</sup>
- 2.7.5. *Observance of the highest quality accounting and auditing standards.* JHMC 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.

## 2.8 Communication

- 2.8.1. *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.
- 2.8.2. *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.

## III. THE BOARD OF DIRECTORS

The powers and functions of JHMC are exercised by the Board of Directors. The Board is the policy making body and is primarily responsible for good governance in JHMC. Corollary to this main responsibility, the Board shall chart the corporate strategy and set guidelines for accomplishment of corporate objectives, as well as provide an independent check on management.

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<sup>3</sup> 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.

- 3.1. Mandate and Responsibility for JHMC's Performance. The responsibilities of the Board are articulated in its Charter and other relevant legislation, rules and regulations. These responsibilities shall include the duty to perform the following, subject to existing laws and regulations:
- 3.1.1. Approve corporate plans and programs consistent with the policy directions of the BCDA<sup>4</sup>;
  - 3.1.2. Approve and adopt internal administrative and operating rules and regulations for implementation by the officials and management<sup>5</sup>;
  - 3.1.3. Establish financial and operations performance targets for management as basis for evaluating and monitoring corporate performance<sup>6</sup>;
  - 3.1.4. Recommend the organizational structure and the duties and responsibilities of all officials and employees to the BCDA and the GCG, and adopt the Compensation and Position Classification System (CPCS) as approved by the President of the Philippines;
  - 3.1.5. Appoint all officials down to the third level and authorize the President to appoint all others: Provided that, all appointments shall be on the basis of merit, experience, integrity and fitness<sup>7</sup>;
  - 3.1.6. Prepare and approve the annual and supplemental budget of the corporation<sup>8</sup>;
  - 3.1.7. Approve capital expenditures and investments program, all forms of indebtedness, substantial sales, transfers and alienation of assets and properties of the corporation<sup>9</sup>;
  - 3.1.8. Require management to periodically submit to the Board such management reports as may be required by it to include, among others, the following: annual budgets, organization, personnel plantilla and programs, report of operations, infrastructure programs and. major capital investment programs<sup>10</sup>;
  - 3.1.9. Develop and implement a privatization commercialization and/or divestment. program of all its major assets and facilities within two (2)

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<sup>4</sup> Sec. 3.1.1., E.O. 62

<sup>5</sup> Sec. 3.1.2., E.O. 62

<sup>6</sup> Sec. 3.1.3., E.O. 62

<sup>7</sup> Sec. 3.1.5., E.O. 62

<sup>8</sup> Sec. 3.1.6., E.O. 62

<sup>9</sup> Sec. 3.1.7., E.O. 62

<sup>10</sup> Sec. 3.1.8., E.O. 62

years from start of operation; Provided that, by the fourth year of full operation, a privatization or divestment program shall have been in place<sup>11</sup>; and

3.1.10. Submit to the BCDA a copy of its management reports to include, among others, the following: annual budgets, organization, personnel, report of operations, infrastructure program and capital investments program, and any other reports which the BCDA may require<sup>12</sup>.

3.2 Specific Functions of the Board. Without prejudice to such general powers and such other powers as may be granted by law, the Board of Directors shall have the following express powers, as specified in the Charter:

3.2.1. Undertake and regulate the establishment, operation and maintenance of business utilities, services and infrastructure within the parks and reserves owned or managed by the Corporation and to fix just and reasonable rates, fares, charges and other prices therefrom<sup>13</sup>;

3.2.2. Accept any local or foreign investment, business or enterprise in the parks and reserves owned or managed by the Corporation subject to existing laws and the rules and regulations of the BCDA<sup>14</sup>;

3.2.3. From time to time, to make and change rules and regulations not inconsistent with these By-laws for the management of the Corporation's business and affairs<sup>15</sup>;

3.2.4. Purchase, receive, take or otherwise acquire in any lawful manner, for and in the name of the Corporation, any and all properties, rights, interest or privileges, including securities and bonds of other corporations, as the transaction of the business of the Corporation may reasonably or necessarily require, for such consideration and upon such terms and conditions as the Board may deem proper or convenient<sup>16</sup>;

3.2.5. Invest the funds of the Corporation in another corporation or business or for any other purposes other than those for which the Corporation was organized, whenever in the judgment of the Board of Directors the interests of the Corporation would thereby be promoted, subject to

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<sup>11</sup> Sec. 3.1.9., E.O. 62

<sup>12</sup> Sec. 3.1.10., E.O. 62

<sup>13</sup> Sec. 1 (a), Art. IV, JHMC By-Laws.

<sup>14</sup> Sec. 1 (b), Art. IV, JHMC By-Laws.

<sup>15</sup> Sec. 1 (c), Art. IV, JHMC By-Laws.

<sup>16</sup> Sec. 1 (d), Art. IV, JHMC By-Laws.

such stockholders' approval and GCG approval as may be required by law<sup>17</sup>. Should JHMC acquire another corporation, or at least a controlling interest therein, a proposal shall first be submitted to the GCG for review and approval of the President;

- 3.2.6 Incur such indebtedness as the Board may deem necessary and, for such purpose, to make and issue evidence of such indebtedness including notes, deeds of trust, instruments, bonds, debentures, or securities, subject to such stockholder's approval as may be required by law, and/or pledge, mortgage, or otherwise encumber all or part of the properties and rights of the Corporation<sup>18</sup>;
- 3.2.7 Make provisions for the discharge of the obligations of the Corporation as they mature, including payment for any property, stocks, bonds, debentures, or other securities of the Corporation lawfully issued for the purpose<sup>19</sup>;
- 3.2.8 Sell, lease, exchange, assign, transfer or otherwise dispose of any property, real or personal, belonging to the Corporation, whenever in the Board's judgment, the Corporation's interest would thereby be promoted<sup>20</sup>;
- 3.2.9 Prosecute, maintain, defend, compromise or abandon any lawsuit in which the Corporation or its officers are either plaintiffs or defendants in connection with the business of the Corporation, and likewise, to grant installments for the payment or settlement of whatsoever debts are payable to the Corporation<sup>21</sup>;
- 3.2.10 Delegate, from time to time, any of the powers of the Board which may lawfully be delegated in the course of the current business or businesses of the Corporation to any standing or special committee or to any officer or agent and to appoint any persons to be agents of the Corporation with such powers (including the power to sub-delegate), and upon such terms, as may be deemed fit<sup>22</sup>; and
- 3.2.11 Implement the By-laws and to act on any matter not covered by the By-laws, provided such matter does not require the approval or

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<sup>17</sup> Sec. 1 (e), Art. IV, JHMC By-Laws.

<sup>18</sup> Sec. 1 (f), Art. IV, JHMC By-Laws.

<sup>19</sup> Sec. 1 (g), Art. IV, JHMC By-Laws.

<sup>20</sup> Sec. 1 (h), Art. IV, JHMC By-Laws.

<sup>21</sup> Sec. 1 (i), Art. IV, JHMC By-Laws.

<sup>22</sup> Sec. 1 (j), Art. IV, JHMC By-Laws.

consent of the stockholders under any existing laws, rules or regulation<sup>23</sup>.

3.3. *Composition of the Board.* The powers and functions of JHMC shall be exercised by a Board of Directors to be composed of eleven (11) members, as follows:

3.3.1. A Chairman; and

3.3.2. Ten (10) other members.

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 (R.A.) No. 10149.

In case of vacancy in the Board, the appointee shall serve the unexpired term of the predecessor.

Unless the President of the Philippines nominates the Chairman of the Board as concurrent President and CEO of JHMC, the positions of Chairman and President and CEO of JHMC shall be separate. The duties and responsibilities of the offices are defined and delineated to ensure check and balance, accountability and independence. In case the offices are unified, safeguards shall be instituted to guarantee independent decision making in the Board.

3.4. *Specific Duties and Responsibilities of a Member of the Board.* A Member of the Board of Directors 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.

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<sup>23</sup> Sec. 1 (k), Art. IV, JHMC By-Laws.

- 3.5 Term of Office. In accordance with R.A. No. 10149, the term of office of the Chairman and each Member of the Board shall be for one (1) year, commencing on the 1<sup>st</sup> of July and ending on the 30<sup>th</sup> of June of the immediately succeeding year, unless sooner removed for cause.<sup>24</sup> In the event that no new Board is appointed by the President of the Philippines, 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 JHMC.<sup>25</sup>
- 3.6 Qualifications of Board Members. All members of the Board and the CEO shall be qualified by the Fit and Proper Rule adopted by the GCG with due regard to one’s integrity, experience, education, training and competence.<sup>26</sup> No person shall be nominated as a member of the Board representing the capital stock of the national government in JHMC unless he is a Filipino citizen, of good moral character, and of recognized competence in relevant fields including but not limited to economics, tourism, management, international relations, law or engineering<sup>27</sup>.
- 3.7 Permanent Disqualification of Board Members.<sup>28</sup> 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, as the case may be, thus:
- 3.7.1. Persons who have been convicted by final judgment of a court or tribunal of:
- 3.7.1.1. 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;
- 3.7.1.2 A crime or offense where the sentence imposed is a term of

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<sup>24</sup> Sec. 17, R.A. 10149.

<sup>25</sup> 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.

<sup>26</sup> Sec. 13, GCG MC No. 2012-07, “Code of Corporate Governance for GOCCs”, 28 November 2012.

<sup>27</sup> Sec. 3, E.O. 103, s. 1993.

<sup>28</sup> See: Art. 6.1, GCG MC No. 2012-05, “Fit and Proper Rule for Appointive Directors and CEOs of GOCCs”, 28 November 2012.

- imprisonment of at least six (6) years and one (1) day, or;
- 3.7.1.3 A violation of the laws, rules and regulations particularly applicable to the sector under which the GOCC is classified, and in other related sectors;
  - 3.7.2. Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;
  - 3.7.3. Directors, CEOs and Officers of GOCCS who have been:
    - 3.7.3.1. 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;
    - 3.7.3.2. 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
    - 3.7.3.3 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;
  - 3.7.4. 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:
    - 3.7.4.1. 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.

- 3.8. Temporary Disqualification of Incumbent Board Members.<sup>29</sup> 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:
- 3.8.1. They refused or failed to fully disclose the extent of their business interest or any Material Information to JHMC, 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;
  - 3.8.2. They have been absent or who 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;
  - 3.8.3. They are delinquent in the payment of their obligations, defined as follows:
    - 3.8.3.1. 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.
    - 3.8.3.2. 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.
    - 3.8.3.3. Such temporary disqualification shall be in effect as long as the delinquency persists.

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<sup>29</sup> See: Art. 6.2, GCG MC No. 2012-05.

- 3.8.4. They have been convicted in the first instance by a court for:
- 3.8.4.1 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;
  - 3.8.4.2 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;
  - 3.8.4.3 Violation of banking laws, rules and regulations; or
  - 3.8.4.4 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 and JHMC of a certified true copy of a judgment amounting to an acquittal;
- 3.8.5. 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;
- 3.8.6. 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 JHMC 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;
- 3.8.7. 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 JHMC an official certification that he/she has attended such seminar;
- 3.8.8. 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;

- 3.8.9. 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;
- 3.8.10. They have derogatory records as certified 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 Board shall determine from the nature of the derogatory record whether it shall constitute a ground for temporary disqualification;
- 3.8.11. 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 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
- 3.8.12. 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.
- 3.9 *Fiduciary Duties of the Board and Officers.* As fiduciaries of the State, Members of the Board of Directors and the Officers of JHMC have the legal obligation and duty to always act in the best interest of the JHMC, with utmost good faith in all its dealings with the properties, interests and monies of JHMC. The Members of the Board and Officers of JHMC shall:
- 3.9.1 Act with the utmost and undivided loyalty to JHMC;
- 3.9.2 Act with due care, extraordinary diligence, skill and good faith in the conduct of the business of JHMC;

- 3.9.3 Avoid conflicts of interest and declare any interest they may have in any particular matter before the Board;
- 3.9.4 Apply sound business principles to ensure the financial soundness of the JHMC; and
- 3.9.5 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.<sup>30</sup>

Where a Member of the Board or an Officer, by virtue of the office, acquires or receives for oneself a benefit or profit, of whatever kind or nature including, but not limited to, the acquisition of shares in corporations where the JHMC has in interest, using the properties of JHMC for their own benefit, receiving commission on contracts from JHMC's assets, or taking advantage of corporate opportunities of JHMC, all such profits or benefits shall be subject to restitution under Section 24 of R.A. 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.

### 3.10. Internal Control Responsibilities of the Board

- 3.10.1. The control environment of JHMC consists of:
  - 3.10.1.1. The Board which ensures that the JHMC is properly and effectively managed and supervised;
  - 3.10.1.2. A Management that actively manages and operates JHMC 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 JHMC'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.

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<sup>30</sup> Sec. 19, R.A. 10149.

- 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 and CEO with the appropriate ability, integrity, and experience to fill the role. The President and CEO shall be subject to the disciplinary authority of the Board.<sup>31</sup>
  - 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 JHMC's personnel and human resources policies, compensation plan and the management succession plan.
- 3.11. Collective and Individual Liability of Board Members. Board members who willfully and knowingly vote or consent to patently unlawful acts of JHMC 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 JHMC, BCDA, the State, stakeholders and/or third persons, without prejudice to the imposition of criminal or administrative penalties provided by the Anti- Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials.

In addition, when a Board Member attempts to acquire or acquires, in violation of his duty, any interest adverse to JHMC 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 JHMC and must account for the profits which otherwise would have accrued to JHMC. He shall also be liable to for violation of the Anti- Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials.

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

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<sup>31</sup> Sec. 18, R.A. 10149.

the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials.

3.12. Board Meetings and Quorum Requirement.

The annual meetings of the Board of Directors to elect officers and to transact business as may properly come before the meetings, shall be held after the stockholders' meeting at which they were elected, on a date approved by the Board<sup>32</sup>

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 every month at a place and date as determined and approved by the Board of Directors, provided that the Chairman may reschedule the same upon notice to all members of the Board<sup>33</sup>. Special meetings may be held at any time upon the call of the Chairman or President and CEO and/or upon the request of two or more directors.<sup>34</sup>

The Corporate Secretary shall notify in writing or by telephone each member of the Board of all special meetings at least three (3) business days before any such meetings. Notice need not be given of regular meetings of the Board of Directors held at times fixed by resolution of the Board. Failure to give notice of any irregularity thereof shall not invalidate any regular meetings or any proceedings thereat. In the case of special meetings, the subject thereof need not be stated in the notice.<sup>35</sup>

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.

3.13. Remuneration of Appointive Directors and Officers. The compensation of the Members of the Board of Directors shall have the following components:

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

3.13.2. Performance-Based Incentives.

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<sup>32</sup> Sec. 5 of Art. IV, JHMC By-Laws.

<sup>33</sup> Sec. 6 of Art. IV, JHMC By-Laws.

<sup>34</sup> Sec. 7 of Art. IV, JHMC By-Laws.

<sup>35</sup> Sec. 9 of Art. IV, JHMC By-Laws.

Members of the Board shall receive a *per diem* based on the JHMC classification approved by the GCG. The *per diem* collected per month shall not exceed the equivalent of four (4) meetings<sup>36</sup> and shall further be subject to the limits set forth by the GCG. Any increases from the current rates of per diems being granted shall take effect only upon approval by the GCG.

- 3.14. Annual Performance Evaluation System. Performance Agreements shall be entered into between JHMC, as represented by its Governing Board, and the State, as represented by GCG.<sup>37</sup> JHMC 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 JHMC Board shall ratify the Performance Agreement.<sup>38</sup>

A Performance Agreement shall likewise be entered into by and between the Chief Executive Officer of JHMC with BCDA embodying the performance criteria and target for the year and the desired goals of the succeeding years as worked out and agreed upon by JHMC and the BCDA.<sup>39</sup> The BCDA shall conduct at least a semi-annual review of operations of JHMC in relation to established criteria and agreed performance targets.<sup>40</sup>

- 3.15 Annual Performance Evaluation of the Board. A systematic evaluation process of the Board shall be developed as a necessary tool in enhancing its professionalism and as a useful incentive for Board Members to devote sufficient time and effort to their duties. The evaluation should also be instrumental in developing effective and appropriate induction and training programs for new and existing members of the Board<sup>41</sup>.

The performance evaluation shall cover all Appointive Directors as the basis for the determination of whether they shall be recommended for reappointment. It also covers the *Ex Officio* Directors or their Alternates for purposes of being able to report to the President the performance of such *Ex Officio* Directors, as well as to allow the GCG to develop and evolve a good governance system for *Ex Officio* Directors in the GOCC Sector.<sup>42</sup>

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<sup>36</sup> Sec. 9, R.A. 7227.

<sup>37</sup> Sec. 3, GCG MC No. 2013-02, "Performance Evaluation System for the GOCC Sector", 29 April 2013.

<sup>38</sup> Sec. 7.1., GCG MC 2013-02.

<sup>39</sup> Sec. 3.3.6, E.O. 62, s. 1993

<sup>40</sup> Sec. 3.3.7, E.O. 62, s. 1993

<sup>41</sup> Sec. 17, GCG MC 2012-07

<sup>42</sup> Sec. 2, GCG MC 2014-03

- 3.15.1. *Measures/Performance Indicators.* The JHMC Board's performance shall be based on the Measures/Performance Indicators and Annual Targets as contained in the Performance Agreement between JHMC and the GCG. It is understood that JHMC must achieve a weighted average rating of 90% to be eligible to grant any performance-based incentives<sup>43</sup>.
- 3.15.2. *Strategic Initiatives.* JHMC commits to undertake key programs and/or projects identified as having significant impact on its performance and shall provide quarterly monitoring reports<sup>44</sup> to the GCG for this purpose, while at all times adhering to the principles of transparency, good governance and integrity.
- 3.15.3. *Engagement of Services of Experts.* JHMC may retain outside expertise to develop specific process of Board evaluation most appropriate to JHMC under its mandate.

#### 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. *Executive Committee*<sup>45</sup>. The Committee is composed of not less than three (3) members of the Board, with the Chairman of the Board being the Committee Chairman. The Committee, in accordance with the authority granted by the Board, or during the absence of the Board, shall act by a vote of at least two-thirds (2/3) of its members on such specific matters within the competence of the Board as may from time to time be delegated to the Committee in accordance with the GOCCs Charter or By-Laws, except with respect to:
- 4.1.1.1 Approval of any action for which shareholders' approval is also required;
  - 4.1.1.2 Filing of vacancies on the Board or in the Executive Committee;
  - 4.1.1.3 Amendment or repeal of By-Laws or the adoption of new By-Laws;

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<sup>43</sup> Sec. 5, GCG MC 2013-02

<sup>44</sup> Sec. 7.2, GCG MC 2013-02

<sup>45</sup> JHMC Board Resolution No. 2013-0114-012 adopting GCG Code of Corporate Governance, s. 2012

- 4.1.1.4 Amendment or repeal of any resolution of the board which by its express terms cannot be amended or subject to repeal;
  - 4.1.1.5 Distribution of cash dividends; and
  - 4.1.1.6 Exercise of powers delegated by the board exclusively to other committees.
- 4.1.2. *Audit Committee*<sup>46</sup>. The Committee shall consist of at least three (3) Directors, whose Chairman should have audit, accounting or finance background. The Committee shall be responsible for the following:
- 4.1.2.1 Overseeing, monitoring and evaluating the adequacy and effectiveness of the GOCC's internal control system, engage and provide oversight of the GOCC's internal and external auditors, and coordinate with the Commission on Audit (COA);
  - 4.1.2.2 Reviewing and approving audit scope and frequency, the annual internal audit plan, quarterly, semi-annual and annual financial statements before submission to the Board, focusing on changes in accounting policies and practices, major judgmental areas, significant adjustments resulting from the audit, going concern assumptions, compliance with accounting standards, and compliance with tax, legal, regulatory and COA requirements;
  - 4.1.2.3 Receiving and reviewing reports of internal and external auditors and regulatory agencies, and ensuring that Management is taking appropriate corrective actions, in a timely manner in addressing control and compliance functions with regulatory agencies;
  - 4.1.2.4 Ensuring the internal auditors have free and full access to all the GOCCs records, properties and personnel relevant to and required by its function and that the internal audit activity shall be free from interference in determining its scope, performing its work and communicating its results; and
  - 4.1.2.5 Developing a transparent financial management system that will ensure the integrity of internal control activities throughout the GOCC through a procedures and policies handbook that will be used by the entire organization.

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<sup>46</sup> JHMC Board Resolution No. 2013-0114-012 adopting GCG Code of Corporate Governance, s. 2012

- 4.1.3 *Governance Committee.* The Committee shall assist the Board of Directors in fulfilling its corporate governance responsibilities. The Committee shall be responsible for the following:
- 4.1.3.1. Overseeing the periodic performance evaluation of the Board and its committees and Management; and also conducting an annual self-evaluation of their performance;
  - 4.1.3.2. Deciding whether or not a Director is able to and has been adequately carrying out his/her duties as director bearing in mind the director's contribution and performance (e.g. competence, candor, attendance, preparedness and participation). Internal guidelines shall be adopted that address the competing time commitments that are faced when directors serve on multiple boards;
  - 4.1.3.3. Recommending to the Board regarding the continuing education of Directors, assignment to Board Committees, succession plan for the Executive Officers, and their remuneration commensurate with corporate and individual performance; and
  - 4.1.3.4. Recommending the manner by which the Board's performance may be evaluated and proposing an objective performance criteria to be approved by the Board. Such performance indicators shall address how the Board will enhance long-term shareholder value.
- 4.1.4. *Nominations, Remunerations, and Organizational Development Committee*<sup>47</sup>. The Committee shall consist of at least three (3) members of the Board. The Committee shall be responsible for the following:
- 4.1.4.1 The Organizational Development Committee shall be tasked to establish formal and transparent procedures for the development of policies on remuneration or determination of remuneration levels for individual directors and officers depending on the particular needs of the corporation.
  - 4.1.4.2 It shall periodically review and evaluate the table of organization and ensure that it is aligned with the mission and vision of the corporation.

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<sup>47</sup> JHMC Board Resolution No. 2011-0315-029, and JHMC Board Resolution No. 2013-0114-012 adopting GCG Code of Corporate Governance, s. 2012

- 4.1.4.3 It shall also evaluate on a regular basis the needs for organizational growth and ensure that compensation packages are equitable and competitive to corporations in the same industry.
  - 4.1.4.4 Installing and maintaining a process to ensure that Officers to be nominated or appointed shall have the qualifications and none of the disqualifications mandated under the laws, rules and regulations;
  - 4.1.4.5 Reviewing and evaluating the qualifications of all persons nominated to positions in the GOCC which require appointment by the Board;
  - 4.1.4.6 Recommending to the GCG nominees for the shortlist in line with the GOCCs and its subsidiaries' Board composition and succession plan; and
  - 4.1.4.7 Developing recommendations to the GGG for updating the CPCS and ensuring that the same continues to be consistent with the GOCCs culture, strategy, control environment, as well as the pertinent laws, rules and regulations.
- 4.1.5. *Risk Management Committee*<sup>48</sup>. The Committee shall consist of at least three (3) members, with at least one member having a background in finance and investments. The Committee shall be responsible for the following:
- 4.1.5.1 Performing oversight risk management functions specifically in the areas of managing credit, market, liquidity, operational, legal, reputational, and other risks of the GOCC, and crisis management, which shall include receiving from Senior Management periodic information on risk exposures and risk management activities;
  - 4.1.5.2 Developing the Risk Management Policy of the GOCC, ensuring compliance with the same and ensure that the risk management process and compliance are embedded throughout the operations of the GOCC, especially the Board and Management level; and
  - 4.1.5.3 Providing quarterly reporting and updating the Board on key risk management issues as well as *ad hoc* reporting and evaluation on investment proposals.

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<sup>48</sup> JHMC Board Resolution No. 2013-0114-012 adopting GCG Code of Corporate Governance, s. 2012

4.1.6. *Business Development Committee*<sup>49</sup>. The Committee shall be responsible for the following:

4.1.6.1 Establish programs that can sustain its long term viability and strength, and to periodically evaluate and monitor the implementation of such policies and strategies of business plans. It shall also evaluate business proposals; and

4.1.6.2 The Committee shall keep the corporation abreast with industry developments and business trends in order to promote the corporation's competitiveness.

4.1.7. Finance Committee<sup>50</sup>. The Committee shall be responsible for the following:

4.1.7.1 The Committee shall be tasked to oversee funding resources and ensure adequacy of funds for corporate operations.

4.1.7.2 It shall also evaluate and recommend the financial outlays for capital expenditures, investment of available funds, and ensure availability of funds for corporate projects and activities.

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 of 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

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<sup>49</sup> JHMC Board Resolution No. 2011-0315-029

<sup>50</sup> JHMC Board Resolution No. 2011-0315-029

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 JHMC 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 provided 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.<sup>51</sup>
- 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 and CEO and the Board Secretariat when undertaking activities involving internal affairs with a view to facilitate coordination

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<sup>51</sup> Sec. 10, E.O. No. 24, Series of 2011.

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 JHMC employees may be called upon 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 JHMC'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.
  - 5.1.5. Shall also exercise such powers and perform such duties as the Board of Directors may assign to him.
- 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<sup>52</sup>.
- 5.3. President and Chief Executive Officer. The President and CEO is ultimately accountable for the JHMC's organization and procedural controls. In addition to the duties imposed on him by the Board and JHMC Charter, 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.

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<sup>52</sup> Sec. 15.2., GCG MC No. 2012-07.

- 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 JHMC 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 JHMC may require to be brought to its notice.
- 5.4. Corporate Secretary<sup>53</sup>. The Corporate Secretary need not be a member of the Board. He shall be the custodian of and shall maintain the corporate books and records, and shall be the recorder of the Corporation's formal actions and transactions. He shall have the following specific powers and duties:
- 5.4.1 Record or see to the proper recording of the minutes and transactions of all meetings of the directors and the stockholders and maintain minute books of such meetings in the form and manner required by law;
- 5.4.2 Keep or cause to be kept record books showing the details required by law with respect to the stock certificates of the Corporation, including ledgers and transfer books showing all shares of the Corporation subscribed, issued and transferred;
- 5.4.3 Keep the corporate seal and affix it to all papers and documents requiring a seal, and attest by his signature all corporate documents requiring the same;
- 5.4.4 Attend to the giving and serving of all notices of the Corporation required by law or these By-laws to be given;
- 5.4.5 Certify to such corporate acts, countersign corporate documents or certificates, and make reports or statements as may be required of him by law or by government rules and regulations;
- 5.4.6 Act as inspector at the election of directors, and, as such, to determine the number of shares of stock outstanding and entitled to vote; the shares of stock outstanding and entitled to vote; the shares of stock represented at the meeting; the existence of a quorum; the validity and effect of proxies; and to receive votes; ballots or consents; hear and determine all challenges and questions arising in connection with the right to vote. The Corporate Secretary may assign the exercise or performance of any or all of the foregoing duties, powers and functions to any other person or persons, subject always to his supervision and control; and
- 5.4.7 Perform such other duties as are incidental to his office or as may be assigned to him by the Board of Directors or the President.

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<sup>53</sup> Sec. 5, Art. V, JHMC By-Laws.

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

- 5.5. Corporate Treasurer<sup>54</sup>. The Corporate Treasurer shall be appointed by the Board and need not be a member of the Board. The Corporate Treasurer of the Corporation shall be the chief finance officer, shall have charge of the funds, securities, receipts and disbursements of the Corporation. The Corporate Treasurer shall have the following duties:
- 5.5.1 Keep full and accurate accounts of receipts and disbursements in the books of the JHMC;
  - 5.5.2 Have custody of and be responsible for all the funds, securities and bonds of the JHMC;
  - 5.5.3 Deposit in the name and to the credit of JHMC, in such bank as may be designated from time to time by the Board of Directors, all the moneys, funds, securities bonds and similar valuable effects belonging to JHMC which may come under his control;
  - 5.5.4 Render an annual statement showing the financial condition of the Corporation and such other financial reports as the Board of Directors, the Chairman of the Board, or the President may, from time to time, require;
  - 5.5.5 Prepare such financial reports, statements, certifications and other documents which may, from time to time, be required by government rules and regulations and submit the same to the proper government agencies; and
  - 5.5.6 Exercise such powers and perform such duties and functions as may be assigned to him by the Board.
- 5.6. Compliance Officer. The Board shall appoint a Compliance Officer who shall report directly to the Chairman of the Board. He/she shall perform the following duties:
- 5.6.1. Monitor compliance by JHMC 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.

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<sup>54</sup> Sec. 6, Art. V, JHMC By-Laws.

- 5.6.2. Certify the extent of the JHMC'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. MANAGEMENT

The Management stands as the locus of decision-making for the day-to-day affairs of JHMC. It determines JHMC'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.

- 6.1. Management should be primarily accountable to the Board. Management is primarily accountable to the Board for the operations of JHMC. As part of its accountability, it is obligated to provide the Board with complete and adequate information on the operations and affairs of JHMC in a timely manner.
- 6.2. Executive Officers. Executive officers of JHMC down to the third level shall be elected or appointed by the Board. The President and 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 Labor laws, rules and regulations, except those co-terminus employees of the members of the Board.<sup>55</sup>
- 6.2.1. President<sup>56</sup> and Chief Executive Officer. The President and Chief Executive Officer shall be responsible for the administration and direction of the day-to-day business affairs of the Corporation. He shall exercise the following functions:
- 6.2.1.2 Initiate and develop corporate objectives and policies and formulate long range projects, plans and programs for the approval of the Board of Directors, including those for executive training, development and compensation;
  - 6.2.1.3 Ensure that the administrative and operational policies of the Corporation are carried out under his supervision and control;

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<sup>55</sup> Sec. 10 (b), RA 7227.

<sup>56</sup> Sec. 3, Art. V, JHMC By-Laws.

- 6.2.1.4 Subject to guidelines prescribed by law, appoint, remove, suspend or discipline employees of the Corporation, prescribe their duties and determine their salaries;
- 6.2.1.5 Oversee the preparation of the budgets and the statements of accounts of the Corporation;
- 6.2.1.6 Prepare such statements and reports of the Corporation as may be required of him by law;
- 6.2.1.7 Represent the Corporation in all functions and proceedings;
- 6.2.1.8 Execute on behalf of the Corporation all contracts, agreements and other instruments affecting the interests of the Corporation which require the approval of the Board of Directors, except as otherwise directed by the Board of Directors;
- 6.2.1.9 Make reports to the Board of Directors and stockholders;
- 6.2.1.10 Sign certificates of stocks;
- 6.2.1.11 Perform such other duties that are incidental to his office or as may be entrusted to him by the Board of Directors.

The President may assign the exercise or performance of any of the foregoing powers, duties and functions to any other officer(s), subject always to his supervision and control.

- 6.2.2 *Vice President(s)*<sup>57</sup> and *Chief Operations Officer*. If one or more Vice-Presidents are appointed, he/they shall have such powers and shall perform such duties as may from time to time be assigned to him/them by the Board of Directors or by the President.

## VII. DIRECTORS AND OFFICERS LIABILITY INSURANCE/ DIRECTORS AND OFFICERS LIABILITY FUND

It is within the authority of the Governing Board of every GOCC to adopt a scheme which may be wholly DOLI-covered, or wholly DOLF-covered, or a combination of both, in order to ensure the most optimum coverage for the GOCC, taking into consideration the corporate operating environment, as well as the GOCC's litigation history<sup>58</sup>.

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<sup>57</sup> Sec. 4, Art. V, JHMC By-Laws.

<sup>58</sup> Sec V, GCG MC No. 2012-10.

- 7.1 Directors and Officers Liability Insurance (DOLI). Having imposed the highest level of responsibility and accountability on the members of the Board and Officers, it is equitable that when JHMC 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 measure therefore to obtain DOLI coverage for JHMC itself and the members of the Governing Board and Officers against contingent claims and liabilities that may arise from, as well as the expenses that may be incurred in prosecuting, the actions that may be filed against JHMC arising from the actions of the Governing Board and/or Management that may cause loss or damage to third parties<sup>59</sup>.
- 7.2 Directors and Officers Liability Fund (DOLF). The Governing Board may find it more feasible and efficient that instead of obtaining solely a DOLI coverage, JHMC may establish a DOLF based on a proper feasibility study submitted by a reputable risk agency, under the terms and conditions provided in Section V of GCG Memorandum Circular No. 2012-10, as well as those mandated by the Commission on Audit<sup>60</sup>.

## VIII. MISCELLANEOUS PROVISIONS

- 8.1. 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.

- 8.2. 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.
- 8.3. Effectivity. This Manual shall be effective fifteen (15) days after it is published in the in the JHMC website and from the date formal notice of the GCG approval is received.

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<sup>59</sup> Sec. 19, R.A. No. 10149 and Sec II, GCG MC No. 2012-10.

<sup>60</sup> Sec V, GCG MC No. 2012-10.