

Organization and Operation of the Regulatory Office

1. General

The Regulatory Office shall be established under the jurisdiction of the MWSS Board of Directors, pursuant to Section 4 (c) of the MWSS Charter and in accordance with other applicable laws and regulations, not less than 30 days after the Commencement Date. No change will be made to the MWSS Charter in connection with the establishment of the Regulatory Office. Rather, the powers and responsibilities of the Regulatory Office shall be as set out in the Concessionaire Agreement, including this Exhibit A.

2. Composition

The Regulatory Office shall be composed of five members (each a “Member”) for five-year term; provided that the term of appointment of two of the initial Members (other than the Director) shall be for three years. No Member of the Regulatory Office shall have any present or prior affiliation with MWSS or either of the Concessionaires (or any affiliate of either of the Concessionaires).

One of the Members shall be designated as the Director of the Regulatory Office (the “Director”) and that person shall carry out the special responsibilities described below.

No Member of the Regulatory Office may be removed except by action of the Appeals Panel taken with the concurrence of a majority of the members of the Appeals Panel taken with the concurrence of a majority of the members of the Appeals Panel, and any proposed removal of a Member shall be treated as a Major Dispute for purposes of Section 12.3 of the Concession Agreement. In the event of the death, incapacitation or resignation of a Member, a successor shall be appointed to complete the unexpired term of that Member.

3. Physical Location

The Regulatory Office shall be given suitable office space in Metro Manila at a location separate from any other office or establishment of MWSS or either Concessionaire. The Administrator of MWSS shall be responsible for securing such office facilities in connection with the initial establishment of the Regulatory Office. Thereafter, the Director shall be responsible for any subsequent relocation or adjustment of office space; provided that the physical location of the Regulatory Office shall always be separate from any other office or establishment of MWSS or either of the Concessionaires.

4. Operation

The Regulatory Office shall function as a Committee and the affirmative vote of three Members shall be required in connection with any action or decision of the Regulatory Office on a substantive matter affecting the Concession Agreement. The Director may from time to time prescribe procedural or administrative rules governing the activities of the Regulatory Office that are not inconsistent with this memorandum.

5. Duties of the Director

The Director shall have overall responsibility for the operation of the Regulatory Office. In particular, the Director will:

- Chair meetings of the Regulatory Office;
- appoint individual Members to oversee on a day-to-day basis the Divisions of the Regulatory Office as described below;
- have final approval over the hiring and dismissal of all professional staff members of the Regulatory Office; and
- act as the principal public spokesperson of the Regulatory Office in matters affecting the Concessions.

The Director should be an individual of the highest professional reputation and integrity having the ability to develop rapidly a thorough understanding of the issues affecting the regulation of water and sewerage services in the two Service Areas.

6. Divisions

The Regulatory Office shall have four divisions (the "Divisions") as follows:

- Technical regulation (responsible for technical and engineering functions including asset management and investment);
- Secretary and legal adviser;
- Financial regulation (responsible for regulatory accounting, rate adjustment and economic functions); and
- Quality and Customer service regulation (responsible for service and Customer relations including Customer complaints and appeals).

The Director shall appoint one Member of the Regulatory Office to oversee each Division. That Member shall be responsible, with the approval of the Director, for hiring appropriate professional and support staff to carry out the functions of that Division. It is expected that in many cases staff members from different Divisions will be asked to work together on a team basis to address specific issues or problems.

7. Functions

It is expected that the functions of the Regulatory Office will change over time, as the regulatory regime is established and develops.

The initial and transitional functions of the Regulatory Office will include;

- recruitment and training of staff and establishment of the Office;
- monitoring and enforcing rate levels during the transition to operation by the Concessionaires;
- developing and establishing the contractual arrangements for the production and dissemination of audited regulatory information, including service and financial performance; and
- raising awareness of the rights of existing and prospective Customers under the new arrangements.

Ongoing functions are expected to include:

- the monitoring of the awarded Concession Agreements;
- reviewing and monitoring of water supply and sewerage rates;
- implementing Extraordinary Price Adjustment provisions;
- implementing Rate Rebasing provisions;
- monitoring contracts between the Concessionaire and Customers for the provision of water and sewerage services;
- arranging for the regular, independent technical and financial audit of the activities of the Concessionaire, and the public dissemination of such information;
- monitoring and enforcing standards of service to Customers, and any agreed improvement in these standards, or extensions in the coverage of water supply and sewerage service;
- monitoring the production of audited financial information, ruling on cost allocation and other accounting practices appropriate for the rate-setting methodology;
- monitoring the reported, audited condition of water and sewerage service infrastructure assets, and enforcement of the Concession Agreement with respect to these;
- reporting on the Regulatory Office's activities and communicating the Office's decisions; and
- responding to complaints or representations received from Customers and other interested groups.

To assist the Regulatory Office in carrying out its responsibilities regarding the Concession Agreement, MWSS shall arrange for the delivery to the Regulatory Office (with a copy to each Concessionaire) of a manual describing the implementation of the relevant provisions of the Concession Agreement.

8. Staff

No individual who has worked for MWSS or either of the Concessionaires (or any of their affiliates) within the five-year period preceding his or her application for employment by the Regulatory Office shall be eligible for employment by the Regulatory Office.

Professional and support staff of the Regulatory Office shall be treated, for purposes of payroll and employee benefits only, as employees of MWSS. Professional and support staff of the Regulatory Office may only be hired and dismissed by the Regulatory Office.

9. Use of Outside Experts

It is expected that the Regulatory Office shall make extensive use of outside experts, particularly in the early years of the Concession. The Regulatory Office may employ experts with international experience, where appropriate, to provide information and guidance on regulatory experience in other countries.

Specifically, it is expected that the Regulatory Office will appoint:

- economic experts, who will provide on-going advice on regulatory strategy, and will develop and assist in the implementation of methodologies for rate rebasing, Extraordinary Price Adjustments, and application of the adjustment limit provisions, including the derivation of the Appropriate Discount Rate, and will assist the Regulatory Office at the time of any Extraordinary Price Adjustments and general rate rebasing;
- engineering consultants, who will assist the Regulatory Office in developing a performance monitoring system (in which key service performance indicators will be defined, measured, audited, published, and analyzed), as well as assist the Regulatory Office in reviewing engineering cost submissions provided by Concessionaires (e.g., in connection with an Extraordinary Price Adjustment) and advise on the application of the asset condition and information disclosure provisions; and
- financial and accounting experts, who will help the Regulatory Office to develop performance requirements for the submission of financial information on the concession business information relating to MWSS and Concessionaire loans, application of accounting principle (e.g., in respect of asset valuation and depreciation policy), and requirements for independent audit of each Concessionaire's finances, particular as regards arm's-length transactions with shareholders

EXHIBIT B

Form of Opinion of Special Philippine Counsel to the Concessionaire

[Letterhead of Special Philippine Counsel to the Concessionaire]
_____, 1997

[Address of MWSS]

Ladies and Gentlemen:

We have acted as special Philippine counsel to _____ (the Concessionaire) in connection with the granting by Metropolitan Waterworks and Sewerage System (“MWSS”) of a concession to operate its waterworks and sewerage supply services within a specified service area pursuant to a Concession Agreement dated _____, 1997 (the “Agreement”) by and between MWSS and the Concessionaire. This opinion letter is furnished to you pursuant to Section 15.2 (iii) (a) of the Agreement. Capitalized terms used herein which are not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

In arriving at the opinions expressed below, we have examined and relied upon originals or copies certified or otherwise identified to our satisfaction of (i) the Agreement; (ii) the Article of Incorporation and the By-Laws of the Concessionaire; and (iii) all such corporate records of the Concessionaire and such other instruments and other certificates of public officials, officers of the Concessionaire and such other persons as we have deemed appropriate as a basis for the opinions expressed below. In rendering the opinions expressed below, we have assumed and have not verified that the signatures on all documents that we have examined are genuine.

Based on the foregoing, and subject to the qualifications and limitations herein contained, it is our opinion that:

1. The Concessionaire is a corporation duly organized, validly existing and in good standing under the laws of the Republic of the Philippines. The Concessionaire has full corporate power and authority to carry on its business as now being conducted and is qualified to do business in all jurisdictions where the ownership of its assets or the conduct of its business requires such qualification. The voting equity capital of the Concessionaire is (i) at least 60% owned by citizens of the Republic of the Philippines or by corporations that are themselves at least 60% owned by citizens of the Republic of the Philippines, (ii) at least 20% owned by the International Water Operator and (iii) at least 20% owned by the Sponsor.

2. The Concessionaire has full power and authority to execute and deliver, and consummate the transactions contemplated by, the Agreement.

3. The execution and delivery by the Concessionaire of the Agreement, and the consummation by the Concessionaire of the transactions contemplated thereby, have been duly authorized by all necessary corporation action of the Concessionaire, and no further corporate action or proceeding on the part of the Concessionaire is necessary to authorize the execution and delivery by the Concessionaire of the Agreement, or the consummation by the Concessionaire of the transactions contemplated thereby.

4. The Agreement has been duly executed and delivered by the Concessionaire and is a legal, valid, binding and enforceable obligation of the Concessionaire in accordance with its terms.

5. To the best of our knowledge after due inquiry, the representations and warranties of the Concessionaire contained in Section 4.2.3 (No Violations; No Consents or Approvals Required), 4.2.3 (Brokers and Finders) and 4.2.5 (Business Plan) of the Agreement are true and correct in all material respects as of the date hereof.

6. The operation of the Concession by the Concessionaire, in a manner consistent with the Technical Submission, is not in violation or contrary to Philippine law or public policy.

The opinion set out in numbered paragraph 4 above is subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and, in respect of the provisions related to the Appeals Panel, to considerations of public policy.

[Add any other qualifications and limitations in counsel's standard form.]

This opinion is furnished to you by us, as special Philippine counsel for the Concessionaire, solely for your benefit in connection with the Agreement, and is not to be read as extending, by implication or otherwise, to any other matter. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purposes.

Very Truly yours,

Form of Opinion of Office of the Government Corporate Counsel

[Letterhead of Office of the Government Corporate Counsel]

_____, 1997

The Board of Trustees
Metropolitan Waterworks and Sewerage System

Gentlemen:

I am the Government Corporate Counsel of the Republic of the Philippines (the "Republic") and I have acted as counsel to the Metropolitan Waterworks and Sewerage System ("MWSS") in connection with the granting by MWSS of a Concession to operate its waterworks and supply sewerage services within a specified service area to _____ (the "Concessionaire") pursuant to a Concession Agreement dated _____, 1997 by and between MWSS and the Concessionaire (the "Agreement"). This opinion letter is furnished to you pursuant to Section 15.3(iii)(a) of the Agreement. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

In arriving at the options expressed below, I have examined and relied upon originals or copies certified otherwise identified to my satisfaction of the following:

- (a) the Agreement
- (b) Republic Act No. 6234, as amended, (the "Charter");
- (c) Section 7 of Republic Act No. 8041 ("An Act to Address the National Water Crisis and for Other Purposes");
- (d) Executive Order No. 286, dated December 6, 1995;
- (e) Executive Order No. 311, dated March 20, 1996 and
- (f) Such records of MWSS and such other instruments and other certificates of public officials, officers of MWSS and such other persons as I have deemed appropriate as a basis for the opinions expressed below.

In rendering the opinions expressed below. I have assumed and have not verified that the signatures on all documents that I have examined are genuine.

Based on the foregoing, and subject to the qualifications and limitations herein contained, it is my opinion that:

1. MWSS is a government corporation duly organized, validly existing and in good standing under the laws of the Republic of the Philippines.

2. MWSS has full power and authority to execute and deliver, and to consummate the transactions contemplated by, the Agreement.

3. The execution and delivery by MWSS of the Agreement, and the consummation by MWSS of the transactions contemplated thereby, has been duly authorized by all necessary action of MWSS and no further action or proceeding on the part of MWSS is necessary to authorize the execution and delivery by MWSS of the Agreement or the consummation by MWSS of the transactions contemplated thereby.

4. The Agreement has been duly executed and delivered by MWSS, with the approval of the President of the Republic, and under the laws of the Republic in effect as of the date of the Agreement and the date hereof, is a legal, valid, binding obligation of MWSS, enforceable against MWSS in accordance with its terms.

5. The representations and warranties of MWSS contained in Section 4. 1.3 (No Violations; No Consents or Approvals Required) of the Agreement are true and correct in all material respects as of the date hereof.

The opinion set out in numbered paragraph 4 above is subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and, in respect of the provisions of the Agreement relating to the Appeals Panel, subject to considerations of public policy.

[Add any other qualifications and limitations in counsel's standard form.]

In rendering the foregoing opinions, I express no opinion as to the law of any jurisdiction other than the law of the Republic of the Philippines.

This opinion is furnished to you by me, in my capacity as the Government Corporate Counsel, solely for your benefit in connection with the Agreement, and is limited strictly to the matters stated herein and is not to be read as extending, by implication or otherwise, to any other matter. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purposes.

Very truly yours,

EXHIBIT D

Form of Undertaking Letter of Republic

[Letterhead of Secretary of Finance]

[Date]

[Name and address of Concessionaire]

Ladies and Gentlemen:

I am the Secretary of Finance of the Republic of the Philippines (the “Republic”) and am delivering this undertaking letter on behalf of the Republic in connection with the granting by the Metropolitan Waterworks and Sewerage System (“MWSS”), a Government-owned corporation, of a concession to operate its waterworks and sewerage supply services within a specified service area to _____ (the “Concessionaire”) pursuant to a Concession Agreement dated _____, 1997 (the “Agreement”) by and between MWSS and the Concessionaire. This undertaking letter is furnished to you pursuant to Section 15.3 (iii)(d) of the Agreement. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

In connection with your entering into the Agreement, the Republic undertakes with you as follows:

1. Acknowledgement

The Republic hereby acknowledges and approves MWSS’ entering into, and performing its obligations under, the Agreement.

2. Financial Guarantees

The Republic hereby guarantees, as primary obligor and not merely as surety, the payment when due of all amounts for which MWSS may _____
To be dated the Closing Date. Become liable pursuant to Section 3.2 (“Liabilities/Revenues”), Section 9.4.4 (“Expiration Payment”), Section 10.3.2 (“Early Termination Amount”) and Section 14.2 (“MWSS Indemnity”) of the Agreement.

3. Special Tax Arrangements/Investment Incentives

The Republic hereby acknowledges the approvals issued by the Board of Investments on _____, 1996 and the Bureau of Internal Revenue on _____, 1996 (copies attached), concerning the exemption from certain Philippine taxes as fully described therein.

4. Standard Rates Reduction

The Republic shall not interfere with the mechanisms contained in Article 9 of the Agreement relating to the Agreement relating to the setting of rates and connection charges for water and sewerage services provided by the Concessionaire within the Service Area. In this regard, the Republic hereby confirms that if the Republic or any Government-owned agency shall cause MWSS or the Regulatory Office to reduce Standard Rates below the level that would otherwise be applicable in accordance with the Agreement, or to defer implementation of any increase in Standard Rates beyond the date for implementation thereof accordance with the Agreement, the Republic shall indemnify the Concessionaire in respect of any loss to the Concessionaire occasioned by such action.

5. Foreign Exchange Convertibility

The Republic hereby confirms that the Concessionaire shall be entitled to convert earnings received in Pesos under the Concession into foreign currency from time to time on a non-discriminatory basis.

6. Raw Water Supply

The Republic hereby acknowledges and approves the letter delivered pursuant to Section 3.9 of the Agreement from MWSS to NWRB dated _____, 1996, which letter was acknowledged and approved by the MWSS Board of Directors on _____, 1996.

* * * * *

This undertaking letter shall be governed by, and construed in accordance with, the law of the Republic of the Philippines. Any dispute relating to this undertaking letter shall be finally settled by arbitration before an arbitration panel consisting of three members appointed and conducting proceedings in Singapore in accordance with the arbitration rules of the United Nations Commission on International Trade Law as in effect on the date hereof. The arbitration shall be conducted in English language.

The Republic hereby waives for itself and its assets and revenues, to the extent permitted by applicable law, any and all immunity from suit, execution, or other legal process in connection with any action or proceeding to enforce an arbitral award relating to this undertaking letter. Notwithstanding the foregoing, the Republic does not waive any such immunity in respect of property which is (i) used by a diplomatic or consular mission of the Philippines, (ii) property of a military character and under the control of a military authority or defense agency, or (iii) located in the Philippines and dedicated to a public or government use.

This undertaking letter is being furnished to you solely for your benefit in connection with the Agreement, and is limited strictly to the matters stated herein and is not to be read as extending, by implication or otherwise, to any other matter.

The Republic consents to any assignment by you of your rights under this letter to section loans incurred in connection with carrying out your obligations under the Concession. Apart from any such assignment, this undertaking letter is not to be used, circulated, quoted or otherwise referred to for any purpose.

Very truly yours,

THE REPUBLIC OF THE PHILIPPINES

By: Roberto de Ocampo
Title: Secretary of Finance

Attachments

Technical and Business Assumptions

This Exhibit E identifies technical and business assumptions that the Concessionaire was asked to use in formulating its financial bid for the Concession and are relevant only in the context of potential GEAs under Section 9.3.1 (viii). These assumptions shall not, however, constrain in any way the judgment or action of the Regulatory Office in carrying out/its functions under Article 9 of the Agreement. In particular, with respect to items 1 and 2 below, it is expected that the Regulatory Office will set different requirements in accordance with the provisions of Article 9.

1. Capital expenditures for any projects necessary to source and treat any incremental Bulk Water in order to satisfy service obligations are deemed to be zero after the tenth anniversary of the Commencement Date and the delivery point for such water is assumed to be located at the proposed Cogeo Reservoir in Antipolo (although the cost of constructing that Reservoir should not be taken into account), with onward distribution the responsibility of the relevant Concessionaire.
2. Upon the first Rate Rebasing Date (January 1, 2003), (i) the rate for sewerage services will increase from 50% to 150% of the corresponding water bill, (ii) the environmental surcharge will be abolished and (iii) a sanitation charge equal to 75% of the corresponding water bill will be established for Customers not connected to the sewerage network.
3. No payments will be required to be made to local governments pursuant to Section 291 of the Local Government Code.
4. For purposes of foreign currency rate calculations, use the rate for the relevant currency as published by the Central Bank of the Philippines on December 6, 1996.
5. The inflation rate over the life of the Concession will zero % per annum.
6. There will be a six year income tax holiday.
7. There will be a 3% tariff on the importation of capital equipment until December 31, 1997
8. There will be tax credits on locally fabricated capital equipment.
9. For purposes of formulating its Rate Bid for Service Area West, each bidder should assume that it will be provided from January 1, 2000 onwards, on a take-or-pay basis, 300 mid of treated Bulk Water from a BOT project at no cost, and the offtake point is assumed to be located at Putatan, Muntinlupa, with onward distribution the responsibility of the Concessionaire for Service Area West

- Concession, MWSS will conduct an international competitive bidding process, in which the Service Area West Concessionaire will be invited to participate, for the supply of 300 mid of treated Bulk Water to Service Area West on a BOT basis by the end of 1999.
10. The expenses and liabilities of the Joint Venture will be split 50/50.
 11. There will be no. VAT applied on the supply and distribution of water by the Concessionaire for MWSS. There will, however, be a 10% VAT applicable to the provision of sewerage and sanitation services by the Concessionaire. No franchise tax will be payable.
 12. The aggregate Concession Fee (exclusive of the contributions to the budgets of MWSS and the Regulatory Office pursuant to Agreement will be as follows:*

BREAKDOWN OF CONCESSION FEES (Million Pesos)**

WEST ZONE

Year	6.4(a) (i) + (ii) + (iii)	6.4(a) (iv) + (v)	Total Concession Fee
1997	1475	218	1693
1998	2047	445	2492
1999	1731	390	2121
2000	1424	378	1802
2001	1158	362	1520
2002	1067	454	1521
2003	1038	398	1436
2004	839	396	1235
2005	799	394	1193
2006	688	392	1080
2007	584	391	975
2008	525	389	914
2009	493	388	881
2010	425	387	812
2011	431	386	817
2012	444	385	829
2013	368	385	753
2014	343	426	769
2015	142	307	449
2016	133	317	450
2017	131	69	200
2018	132	57	189

2019	135	58	193
2020	138	59	197
2021	6.3	0	6.3

EAST ZONE

Year	6.4 (a) (i) + (iii)	6.4 (a) (iv) + (v)	Total Concession Fee
1997	164	134	298
1998	227	219	446
1999	192	240	432
2000	158	215	373
2001	129	203	332
2002	118	301	419
2003	115	260	375
2004	93	257	350
2005	89	255	344
2006	76	217	293
2007	65	217	282
2008	58	216	274
2009	55	215	270
2010	47	215	262
2011	48	214	262
2012	49	214	263
2013	41	213	254
2014	38	236	274
2015	16	160	176
2016	15	158	173
2017	14	56	70
2018	15	57	72
2019	15	58	73
2020	15	59	74
2021	0.7	0	0.7

TOTALS

Year	6.4 (a) (i) + (ii) + (iii)	6.4 (a) (iv) + (v)	Total Concession fee
1997	1,639	352	1,991
1998	2,274	664	2,938
1999	1,923	630	2,553
2000	1,582	593	2,175
2001	1,287	565	1,852
2002	1,185	755	1,940
2003	1,153	658	1,811
2004	932	653	1,585
2005	888	649	1,537
2006	764	609	1,373
2007	649	608	1,257
2008	583	605	1,188
2009	548	603	1,151
2010	472	602	1,074
2011	479	600	1,079
2012	493	599	1,092
2013	409	598	1,007
2014	381	662	1,043
2015	158	467	625
2016	148	475	623
2017	145	125	270
2018	147	144	261
2019	150	116	266
2020	153	118	271
2021	7	0	7

Assumes that no loans will be cancelled.

Includes only the Concession Fee as described under Section 6.4 (a). The 1997 Concession Fee has been calculated for commencement on May 7, 1997.

13. The Concessionaire shall not be required to pay local business taxes, permits, fees and similar charges.
14. The Expiration Payment is zero.

EXHIBIT F

Existing MWSS Fringe Benefits

A. ALLOWANCES

PERA - P500.00 - Salary Grade 1 to 23 except those with RATA

ACA – P500.00 – Salary Grade 1 to 5

RATA – 40% of basic – Supervisory Level, Section Chiefs and up or equivalent ranks.
Technical and Executive Assistants

Medical – 2,500.00/year

Rice – 500.00 / month

Uniform – 2,000.00/ year

Meals – 25.00/day (for medical personnel – P30.00/day)

Longevity – 50.00/ year of service/month

Children – 30.00/child/month, maximum four (4) children below 21 years old

Hazard – 500.00/month

B. BONUSES

Year-end financial Assistance – One (1) Month Gross pay (Basic Salary plus PERA, ACA, rice, meal, longevity, Children and RATA)

Mid-Year – One (1) month Gross Pay

Christmas Bonus and Cash Gift – One (1) month Basic salary plus P1,000 cash gift

Anniversary (Bigay-pala) – 4,000.00 or 50% of basic, whichever is greater

Productivity – As of December 1995 – Amount equivalent to P5,000.00 or 60% of gross pay, exclusive of RATA, whichever is higher

C. PREMIUMS

Graveyard – 50% (12 MN – 6:00 AM)

Nightwork – 25% (6PM – 6AM)

Holiday - 125%

Sunday – 150%

Overtime – 125%

Distress – 25% of basic pay (For Sewerage Dept. only)

D. PAID LEAVES:

Vacation – 15 days/year

Sick – 15 days/year

Maternity – 60 calendar days

Paternity – 7 working days

Emergency Leave – 3 days/year

(Birthday/Funeral/Mourning/Graduation/Enrollment/Wedding/Anniversary/Hospitalization/
Accident/Relocation)

E. STUDY LEAVE

- Study now pay later scheme

- Grant (with contract to serve MWSS)

Monetization of 10 days provided with available leave credits of at least 15 days.