



## BRIEFER ON

# EXECUTIVE ORDER NO. 138, s. 2021

## AND ITS IMPLEMENTING RULES AND REGULATIONS

Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes

### What is EO No. 138, s. 2021?

EO No. 138, s. 2021 was issued to support the efficient implementation of the Supreme Court Ruling on the Mandanas-Garcia case and strengthen the autonomy and empowerment of local government units (LGUs). It directs the full devolution of certain functions of the Executive Branch to the LGUs. It also provides for the creation of a Committee on Devolution to monitor the implementation of said EO.

### What is the Supreme Court (SC) Ruling on the Mandanas-Garcia Case?

In 2018, the SC ruled that the just share of LGUs from the national taxes is not limited to "national internal revenue taxes" collected by the Bureau of Internal Revenue but includes collections (customs duties) of the Bureau of Customs, and other tax collecting agencies. With the expected increase in the just shares of LGUs, they will be better equipped to assume responsibility for the delivery of devolved services as prescribed under Section 17 of the Local Government Code of 1991 (Republic Act [RA] No. 7160) and other pertinent laws.

### Which government entities are covered by this EO?

- All LGUs
- Departments/Agencies/Instrumentalities of the Executive Branch whose functions are in line with the devolved functions of the LGUs under Section 17 of RA No. 7160 and other pertinent laws.



### Is the BARMM covered by this EO?

The LGUs within the BARMM shall not be required to implement EO No. 138 since they are governed by RA No. 11054 or the Organic Law for the BARMM. However, the BARMM Government is not prohibited from adopting the provisions of the EO that it deems applicable to the LGUs within its jurisdiction.



## What are the functions and services that will be devolved?

The functions, services and facilities to be fully devolved are those indicated under Section 17 of the Local Government Code of 1991 and other existing laws which subsequently devolved functions of the NG to the LGUs. Some of these functions/services include, but are not limited to, the following:



Health services



Agricultural services



Local infrastructure services



Natural resource management services



Social welfare services



Tourism services

**Note:** The list of devolved functions and services based on RA No. 7160, and other existing laws can be found in Annex C and Annex D of DBM-DILG Joint Memorandum Circular No. 2021-1 dated August 11, 2021.

(<https://www.dbm.gov.ph/wp-content/uploads/Issuances/2021/Joint-Memorandum-Circular/DBM-DILG-JOINT-MEMORANDUM-CIRCULAR-NO-2021-1-DATED-AUGUST-11-2021.pdf>)

## What is the time frame for devolution under this EO?

The full devolution of functions from the NG to the LGUs will be done within a three-year transition period from FY 2022 to FY 2024.

## What are Devolution Transition Plans (DTPs)?

To ensure the smooth implementation of the full devolution, all LGUs and national government agencies concerned are required to prepare their respective DTPs based on the following guidelines:

- For LGUs - DBM-DILG Joint Memorandum Circular (JMC) No. 2021-1 dated August 11, 2021
- For NGAs - DBM-DILG JMC No. 2021-2 dated August 12, 2021

## What should be included in the DTP?

### NGA DTP:

- Strategic directions/shifts
- Assignment of functions, services, and facilities devolved to each level of government
- Standards for the delivery of devolved services
- NGA capacity development strategy
- LGU capacity development strategy
- Performance monitoring and assessment framework
- Organizational effectiveness proposal

### LGU DTP:

- State of devolved functions, services, and facilities
- Phasing of full assumption of devolved functions, services, and facilities
- Capacity development agenda
- Proposed changes to the organizational structure and staffing pattern
- Local revenue forecast and resource mobilization strategy
- Performance targets for devolved functions and services



## What are the responsibilities of the Committee on Devolution?

The Committee on Devolution (ComDev) is tasked, among others, to:

- Oversee and monitor the implementation of administrative and fiscal decentralization goals of EO No. 138, consistent with RA No. 7160, as amended;
- Evaluate the status and monitor the implementation of the DTPs of NGAs and LGUs;
- Resolve issues and concerns that may arise in the implementation of EO No. 138; and
- Develop a strong communications plan and strategies to inform the public and other stakeholders on the delineation of the functions between the NGAs and the LGUs, and their respective accountabilities.

## What is the role of Non-Government Organizations (NGOs), Civil Society Organizations (CSOs), and People's Organizations (POs) in the devolution effort?

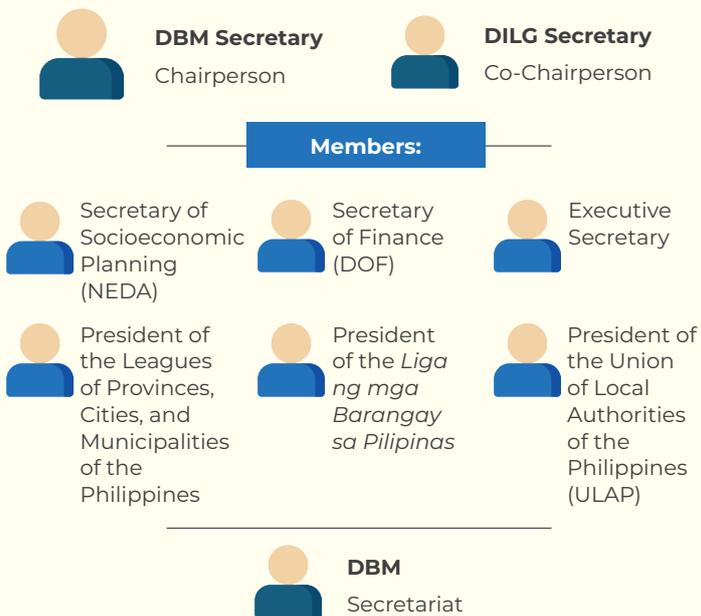
Sections 38 and 39, Rule XII of the IRR of EO No. 138 define the roles of the NGOs, CSOs and POs, recognizing their crucial part in enhancing transparency, accountability, and good governance as active partners in pursuit of local autonomy. They include, but are not limited to, the following:

- Providing feedback on programs, activities, and projects of the government;
- Pushing for various advocacies and initiatives;
- Formulating plans, policies, and issuances; and
- Implementing capacity development programs and other activities.

Moreover, NGOs, CSOs and POs are encouraged to participate in the preparation, implementation and monitoring of the DTPs of the NGAs and the LGUs through consultations and public dialogues.

Representatives from CSOs and POs that are members of the Local/Barangay Development Council shall form part of the LGU Devolution Transition Committee.

## COMMITTEE ON DEVOLUTION



## What is the Growth Equity Fund (GEF)? Are all LGUs entitled to GEF?

Under Section 8 of EO No. 138, s. 2021 and Section 40 of its Implementing Rules and Regulations (IRR), the GEF was conceptualized to address issues on marginalization, unequal development, high poverty incidence, and disparities in the net income of the LGUs.

As such, not all LGUs are entitled to the GEF. Intended to top up their national tax allotment, the GEF will only be made available to the poor, disadvantaged, and lagging LGUs that are financially incapable of allocating funds [i.e., LGUs with high poverty incidence, low financial capacity, and in geographically isolated and depressed areas], and are technically weak in the implementation of devolved services. A necessary amount constituting the GEF shall be included by the DBM in the National Expenditure Program starting FY 2022.

## REGIONAL COMDEV



## What will happen to the personnel of the NGAs who will be affected by the full devolution efforts?

- Personnel hired on a permanent basis and with appointments attested by the Civil Service Commission who may be affected by the full devolution shall have the option to:
  - Apply for transfer to other units/offices within the department/agency/GOCC concerned, without reduction in pay
  - Apply for transfer to other departments/agencies/GOCCs in the Executive Branch, without reduction in pay
  - Avail of the retirement benefits and separation incentives as provided under Section 13 of EO No. 138 and, subject to the discretion of the LGUs
  - Apply for vacant positions that will perform the devolved functions in the LGUs concerned
- Affected employees occupying medical/allied-medical items may apply for transfer to a Department of Health-supervised hospital of their choice.
- Affected personnel who were hired on a casual or contractual basis for the implementation of the devolved functions in the NGAs concerned, may also apply for vacant positions in the LGUs concerned.

A joint memorandum circular will be issued by the DBM and DILG, in coordination with the Civil Service Commission, for this purpose.



## Are the LGUs required to absorb/hire the affected NGA personnel?

No. As provided under Section 24 of the IRR of EO No. 138, the LGUs shall not be compelled to hire any personnel affected by the implementation of EO No. 138. However, should the LGU opt to hire these personnel, they shall be subject to the compensation system of the LGU concerned, and such reemployment shall be considered as a new entry to the civil service. For this purpose, the affected personnel shall sign a waiver or manifestation that they accept these terms as a condition for their employment with the LGU.

