Securities and Exchange Commission PHILIPPINES

BACONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

23 June 2025

SEC OGC Opinion No. 25-08
Re: Revaluation increment or appraisal surplus available for cash and stock dividend

ROXAS CRUZ TAGLE AND CO.
2nd Floor Multinational
6805 Ayala Avenue, Makati City 1226 Philippines
www.roxascruztagle.com

Attn: Mr. Norman Paul A. Turingan

Dear **Mr. Turingan:**

This refers to your letter dated 23 May 2022 requesting confirmation that the exception as previously discussed in the SEC Opinion dated 02 October 1981 (1981 Opinion) still applies in the present.

In the 1981 Opinion, the Commission opined that appraisal increment on real properties cannot be a basis for the declaration of stock dividends in payment to the increase of capital stock, based on the following rationale:

> "Although the foregoing provision does not specifically state that the retained earnings from which the dividends may be declared should arise from its business, sound accounting principles dictate that dividends may be declared only out of actual earnings or profits. The term "retained earnings" as defined under the generally accepted accounting principle is understood to mean as the accumulated profits realized out of normal and continuous operations of the business after deducting therefrom distributions to stockholders and transfer to capital stock or other accounts. Retained earnings definitely would not include increase in the value of fixed assets as a result of revaluation thereof because the same is not earned out of the business of the corporation. Such reappraisal, however apparently justified and accurate for the time being, are conjectural and are subject to market fluctuations and therefore are mere anticipatory of future profits and may never be actually realized as an asset of the company."

However, the same opinion stated an exception from this rule, to wit:

> "Such ruling, however, is not absolute as the Securities and Exchange Commission allows certain exceptions when it made a ruling in the past making revaluation increment or appraisal surplus available for cash and stock dividend. Where a fixed asset is being depreciated based on its appraisal value, the depreciation on the appraisal increment is charged against operations, the earnings from operations in that period are diminished by the amount of such depreciation. This amount of depreciation, therefore, is actual income shifted and lodged in another account. Whether such amount is restituted to retained earnings or not is of no consequence. **In such event, the portion of the increase in the**

value of fixed assets as a result of revaluation thereof may be declared as a dividend,[1] **provided the following conditions exist:**

1. That the company has sufficient income from operations from which **the depreciation on the appraisal increase was charged**;
2. That the company had no deficit at the time the **depreciation on the appraisal increase was charged** to operations; and
3. That **such depreciation on appraisal increase previously charged to operations** has not been erased or impaired by subsequent losses, otherwise, only that portion not impaired by subsequent losses is available for dividend."

Paragraph 1, Section 42 of the Revised Corporation Code (RCC)[2] provides:

> "SEC. 42. Power to Declare Dividends. - **The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, property, or in stock to all stockholders on the basis of outstanding stock held by them:** Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholders until their unpaid subscription is fully paid: Provided, further, That no stock dividend shall be issued without the approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose xxx."

The Commission has recently issued **SEC Memorandum Circular No. 16 Series of 2023 (MC16-23)** on the determination of retained earnings available for dividends pursuant to the requirements of Section 42 of the RCC.

Section 2 (d) of MC 16-23 provides the definition of retained earnings, as follows:

> Retained Earnings- The accumulated profits realized out of normal and continuous operations of the corporation after deducting therefrom distribution to stockholders and transfer to capital stock or other accounts. For purposes of this Circular, the amount of the Retained Earnings of a corporation shall be based on its separate ("stand-alone") audited financial statements.

Section 4 of the same Circular discusses what comprises the retained earnings available for dividend declaration:

> Dividends, whether cash, property, or **stock**, shall be declared out of **unrestricted retained earnings of the corporation**. Accordingly, a corporation cannot declare dividends when it has zero or negative earnings otherwise known as Retained Earnings Deficit. **For such purpose, the surplus profits or income must be a bona fide income founded upon actual earnings or profits. The existence, therefore, of surplus profits arising from the operation of corporate business is a condition precedent to the declaration of dividend.** [Emphasis Supplied]
>
> Additional Paid-in Capital shall neither be declared as a dividend nor shall it be reclassified to absorb deficiency except through an organizational restructuring duly approved by the Commission.
>
> Furthermore, the Reconciliation of Retained Earnings in accordance with this Circular shall not be used by the Real Estate Investment Trust (REIT) companies in determining the distributable income available for its shareholders. The determination of distributable income must be in accordance with the REIT Act and its Implementing Rules and Regulations.

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[1] SEC Ruling dated April 14, 1975.
[2] Republic Act No.11232 otherwise known as An Act providing for the Revised Corporation Code of the Philippines.

The phrase "actual earnings or profit" shall be the net income for the year based on the audited financial statements, adjusted for the following unrealized items:

a. Equity in the net income of the associate/joint venture, net of dividends declared;
b. Unrealized foreign exchange gain, except those attributable to cash and cash equivalents;
c. Unrealized fair value adjustment (market-to-market gains) of financial instruments at fair value through profit or loss (FVTPL);
d. Unrealized fair value gain of Investment Property;
e. Deferred Tax Asset; and
f. Other realized gains and adjustments that the Commission may prescribe.

xxx

RECONCILIATION OF RETAINED EARNINGS AVAILABLE FOR DIVIDEND DECLARATION
For the reporting period ended (Date)

[Company Name]
[Address]

Unappropriated Retained Earnings, beginning of reporting period[3]		**XX,XXX**
Add: Category A: Items that are directly credited to Unappropriated Retained Earnings		
Reversal of Retained Earnings Appropriation/s	xx,xxx	
Effect of restatements or prior-period adjustments	xx,xxx	
Others (describe nature)	xx,xxx	XX,XXX
Less: Category B: Items that are directly debited to Unappropriated Retained Earnings		
Dividend declaration during the reporting period	xx,xxx	
Retained Earnings appropriated during the reporting period	xx,xxx	
Effect of restatements or prior-period adjustments	xx,xxx	
Other (describe nature)	xx,xxx	XX,XXX
Unappropriated Retained Earnings, as adjusted		**XX,XXX**
Add/Less: Net Income (loss) for the current year		**XX,XXX**
Less: Category C.1: Unrealized income recognized in the profit or loss during the reporting period (net of tax)		
Equity in net income of associate/joint venture, net of dividends declared	xx,xxx	
Unrealized foreign exchange gain, except those attributable to cash and cash equivalents	xx,xxx	
Unrealized fair value adjustment (market-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Unrealized fair value gain of Investment Property	xx,xxx	
Other unrealized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS (describe nature)	xx,xxx	
Sub-total		**XX,XXX**

Add: Category C.2: Unrealized income recognized in the profit or loss in

[3] Unappropriated Retained Earnings, beginning of reporting period refers to the ending balance as reported in the "Reconciliation of Retained Earnings Available for Dividend Declaration" of the immediately preceding period.

prior reporting periods but realized in the current reporting period (net of tax)		
Realized foreign exchange gain, except those attributable to Cash and cash equivalents	xx,xxx	
Realized fair value adjustments (market-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Realized fair value gain of Investment Property	xx,xxx	
Other realized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS (describe nature)	xx,xxx	
Sub-total		XX,XXX
Add: Category C.3: Unrealized income recognized in profit or loss in prior periods but reversed in the current reporting period (net of tax)		
Reversal of previously recorded foreign exchange gain, except those attributable to cash and cash equivalents	xx,xxx	
Reversal of previously recorded fair value adjustments (mark-to-market gains) of financial instruments at fair value through profit or loss (FVTPL)	xx,xxx	
Reversal of previously recorded fair value gain of Investment Property	xx,xxx	
Reversal of other unrealized gains or adjustments to the retained earnings as a result of certain transactions accounted for under the PFRS, previously recorded (describe nature)	xx,xxx	
Sub-total		XX,XXX
Adjusted Net Income/Loss		XX,XXX
Add: Category D: Non-actual losses recognized in profit or loss during the reporting period (net of tax)		
Depreciation on revaluation increment (after tax)	xx,xxx	
Sub-total		XX,XXX
Add/Less: Category E: Adjustments related to relief granted by the SEC and BSP[4]		
Amortization of the effect of reporting relief	xx,xxx	
Total amount of reporting relief granted during the year	(xx,xxx)	
Others (describe nature)	(xx,xxx)	
Sub-total		XX,XXX
Add/Less: Category F: Other items that should be excluded from the determination of the amount of available for dividends distribution		
Net movement of treasury shares (except for reacquisition of redeemable shares)	(xx,xxx)	
Net movement of deferred tax asset not considered in the reconciling items under the previous categories	(xx,xxx)	
Net movement in deferred tax asset and deferred tax liabilities related to the same transaction, e.g., set up of right of use of asset and lease liability, set-up of asset and asset retirement obligation, and set-up of service concession asset and concession payable	(xx,xxx)	
Adjustments due to deviation from PFRS/GAAP-gain (loss)	(xx,xxx)	
Other (describe nature)	(xx,xxx)	
Sub-total		XX,XXX
Total Retained Earnings, end of the reporting period available for dividend		XX,XXX

[4] Adjustments related to the relief provided by the SEC and BSP pertain to accounting relief (e.g. losses that are reported on a staggered basis) granted by regulators. However, these are actual losses sustained by the Company and must be adjusted in reconciliation to reflect the actual distributable amount.

As shown in the reconciliation of retained earnings available for dividends, the revaluation increment is not a reconciling item. Only the depreciation expense relative to the revaluation increment is added back to arrive at the adjusted amount of retained earnings available for dividend declaration.

While the 1981 Opinion makes a statement that "[the] portion of increase in the value of fixed assets as a result of revaluation thereof may be declared as dividend", the same should be read in conjunction with the conditions set forth therein. These conditions consistently refer to "depreciation on the appraisal increment charged", which means that this value is the amount charged from operations, rather than the increase in value of the fixed assets as a result of the revaluation, which, by way of reconciliation, shall be added back to the fund available for dividend declaration. Considering the whole context of the rule, it is clear that only depreciation on the revaluation increment is added back to the income for dividend declaration.

Thus, in the above sense, the 1981 Opinion is consistent with the provisions of MC 16-23, and is still applicable.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances, and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[5] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

[5] Section 7, SEC MC No.15 Series of 2003, 16 December 2003.