Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

30 April 2025

SEC-OGC Opinion No. 25-07
Re: Compensation vis-à-vis Reasonable Per Diems of the Board of Trustees

CARTAGENA & CARTAGENA LAW OFFICES
Unit 3F, CSV Properties Bldg.,
329 Maysilo Circle
Plainview, Mandaluyong City 1550
atty.bsc@gmail.com

Attention: **Atty. Benedict S. Cartagena**
Attorney & Counselor-at-Law

Dear Sir:

This refers to your email[1] requesting the Commission's opinion on the substantial distinction or difference between compensation and reasonable per diems received by the Board of Trustees and whether reasonable per diems are subject to approval or ratification from the corporation's members.

In your letter, you cited Section 29 of the Revised Corporation Code (RCC) on the reasonable per diems and compensation of the Board of Directors or Trustees, to wit:

> "Section 29. *Compensation of Directors or Trustees.* – In the absence of any provision in the bylaws fixing their compensation, the directors or trustees shall not receive any compensation in their capacity as such, except for reasonable per diems: *Provided, however,* That the stockholders representing at least a majority of the outstanding capital stock or majority of the members may grant directors or trustees with compensation and approve the amount thereof at a regular or special meeting.
>
> In no case shall the total yearly compensation of directors exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year.
>
> Directors or trustees shall not participate in the determination of their own per diems or compensation.
>
> Corporations vested with public interest shall submit to their shareholders and the Commission, an annual report of the total compensation of each of their directors or trustees."

You mentioned that Bonifacio Heights Residences Condominium Corporation (BHRCC) is a non-stock, non-profit corporation represented by its policy making body, the Board of Trustees, which comprises seven (7) regular trustees and one (1) ex-officio trustee. You mentioned that during every regular board meeting, the members of the Board of Trustees who actually attended thereat, by customary practice, were given *honorarium* or reasonable *per diems.*

With the advent of the RCC, the issues raised by certain members of BHRCC are as follows:

---

[1] Dated 11 January 2023

1. Whether or not the *honorarium* or reasonable *per diem* received is legally permissible; and
2. If so, whether the same shall be subject to determination and ratification of the general members.

It is the view of BHRCC's counsel that the reasonable per diem is an exception to the statutory prohibition against compensation; hence, legally permissible. On the other hand, the statutory prohibition against compensation admits a particular exemption as expressly provided for by law, to wit:

> "Section 29. *Compensation of Directors or Trustees*. – In the absence of any provision in the bylaws fixing their compensation, the directors or trustees shall not receive any compensation in their capacity as such, except for reasonable per diems: ***Provided, however*, That the stockholders representing at least a majority of the outstanding capital stock or majority of the members may grant directors or trustees with compensation and approve the amount thereof at a regular or special meeting."** (Emphasis and underscoring supplied)

Cross-referencing with the BHRCC's by-laws, you argue that the subject of compensation is recognized under Section 8 thereof, which reads:

> "Section 8. Compensation. The compensation of all officers, if any, including the President and Vice-President of the Corporation, shall be evaluated by the Board of Trustees."

In relation thereto, you are now requesting clarity and guidance on the following:

1. Is there substantial distinction or difference between compensation and reasonable per diems?
2. Are reasonable per diems covered by or subject to further approval or ratification from its general members?

Compensation vis-à-vis Reasonable Per Diems of the Board of Trustees

"Per diems" are allowances of money for expenses each day. The term *"per diem"* is limited to pay for a day's services. On the other hand, the word "***compensation***" does not imply an immediate payment, an immediate or direct return, nor the payment of cash fare or its equivalent.[2]

A reading of the Batasan proceedings on Section 30 of the Corporation Code [now Section 29 of the RCC] shows that the terms "salary" and "compensation" were treated as synonymous and used interchangeably, and while "salary" connotes a fixed compensation, *"per diems"* relates to expense reimbursement.[3] Thus, under Section 30 of the Corporation Code [now Section 29 of the RCC], *per diems* have been excluded from the coverage of compensation.

As a general rule, Board members shall receive no compensation other than reasonable *per diems*. By exception, they may receive compensation when (1) the corporate by-laws so provide or when (2) majority of the members at a regular or special meeting agree to give it to them.[4]

The Commission consistently held that "the Board of directors are entitled only to compensation only if there is an express authority in the by-laws or should there not be any provision in the by-laws, by a stockholders' resolution granting the same. Otherwise, they cannot, among themselves award salaries or compensation, except for reasonable *per diems*."[5]

However, the prohibition against granting compensation to directors or trustees of a corporation is not absolute. Note how Section 29 is worded: *"the directors or trustees shall not receive any compensation **in their capacity as such**, xxx"* The phrase *"in their capacity as such"* is not without significance for it

---

[2] SEC Opinion addressed to Eastern Rizal-Laguna Investors League dated 13 June 1991.
[3] *Id.*
[4] G.R. No. 213409, Land Bank of the Philippines, et. al. vs. Commission on Audit, 5 October 2021.
[5] SEC Opinion No. 32-04, Re: Compensation/Salaries/Per Diem of Corporate Officers who are also Members of the Board of Directors dated 4 May 2004 citing SEC Opinion dated 28 November 1998 addressed to Director Candon B. Guerrero.

delimits the scope of the prohibition to compensation given to them for services performed **purely in their capacity as directors or trustees.** Members of the Board, therefore, may receive compensation, in addition to reasonable *per diems*, when they render services to the corporation **in a capacity other than as directors/trustees.**[6]

Based on the foregoing, we answer your first query in the affirmative. Compensation is different from reasonable *per diems*.

Approval of Per Diems of Board Members

Section 29 of the RCC only requires the approval by majority of the stockholders or members of the amount of compensation of directors or trustees, in case the by-laws itself does not provide for such compensation.

Hence, to answer your second query, the *per diems* of directors or trustees does not require prior approval of the stockholders or members. However, this does not prevent the stockholders to review the fixing of *per diems* of the members of the Board and may inquire into its reasonableness, and if found excessive, to afford adequate relief therefrom.[7]

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[8] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[6] SEC-OGC Opinion No. 17-15, 22 November 2017 citing Western Institute of Technology vs. Salas, 278 SCRA 216 (1997).
[7] SEC Opinion dated 13 June 1991 addressed to Eastern Rizal-Laguna Investors League.
[8] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.

14/F The SEC Headquarters, 7907 Makati Avenue
Salcedo Village, Bel-air, Makati City
(+63 2) 8818 5348 / (+63 2) 8818 5418
www.sec.gov.ph | ogc_picc@sec.gov.ph