Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

04 April 2024

SEC OGC Opinion No. 24-07
Re: Section 22 of Republic Act (R.A.) No. 11232 or the Revised Corporation Code of the Philippines (RCCP)

ORACLE (PHILIPPINES) CORPORATION
33F Zuellig Building, Makati Ave
Makati, 1200 Metro Manila

Attention	:	**Atty. Carol B. Taguinod-Sorita** ophilcorp-cl_ph@oracle.com
Re	:	**Request for opinion**

Dear Atty. Taguinod-Sorita:

This refers to your letter dated 14 March 2023[1] requesting, on behalf of Oracle (Philippines) Corporation (Oracle or the Corporation), for an opinion on the composition and qualification of the Board of Directors.

Specifically, you are asking for an opinion on the following matters:

a) Whether or not "the Corporation is now allowed to elect non-resident directors to its Board, which might compose of a majority or even all of the Board membership"; and
b) Whether or not "the Corporation, subject to the requirements under the applicable provisions of the RCC, is allowed to amend its Articles of Incorporation to reflect a Board membership of three (3) or four (4) directors."

Composition of Board of Directors

Section 23 of Batas Pambansa (B.P.) Blg. 86 or the Corporation Code (CC) provides the following rule on the composition of the board of directors, to wit:

> SECTION 23. ***The Board of Directors or Trustees.*** — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.
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> Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. <u>*A*</u>

[1] Received by this Office on 15 March 2023 through e-mail.

> ***majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.***[2] (Emphasis and underscoring supplied)

Section 22 of Republic Act (R.A.) No. 11232 or the Revised Corporation Code of the Philippines (RCCP) amended the foregoing rule, as follows:

> Section 22. The Board of Directors or Trustees of a Corporation; Qualification and Term. – Unless otherwise provided in this Code, the board of directors or trustees shall exercise the corporate powers, conduct all business, and control all properties of the corporation.
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> Directors shall be elected for a term of one (1) year from among the holders of stocks registered in the corporation's books, while trustees shall be elected for a term not exceeding three (3) years from among the members of the corporation. Each director and trustee shall hold office until the successor is elected and qualified. A director who ceases to own at least one (1) share of stock or a trustee who ceases to be a member of the corporation shall cease to be such.[3]

Notably, the residency requirement under Section 22 of the CC was not carried over to Section 23 of the RCCP. ***SEC-OGC Opinion No. 22-07***[4] discussed this matter in this wise:

> Section 23 of the old Corporation Code provides that "a majority of the directors or trustees of all corporations must be residents of the Philippines. On the other hand, Section 22 of the [RCCP] provides for the qualifications and term of the board of directors or trustees of a corporation which ***does not anymore include the residency requirement.***
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> However, Section 46 (f) of the [RCCP] ***allows private corporations to provide in their bylaws the directors' qualifications such as residency requirement. Thus, if a corporation provides in its bylaws the requirement that majority of its directors must be residents of the Philippines, then, it may do so.*** Such corporation may not elect directors, all of whom are non-residents of the Philippines, if its bylaws still requires that the majority of the elected directors must be residents of the Philippines.
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> xxxx
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> From the foregoing, corporations with bylaws containing the residency requirement which desire to remove such requirement must amend their bylaws to formalize such choice pursuant to Section 46 (f) of the [RCCP], the provisions of Section 22 notwithstanding.
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> As to your second query, Section 47 of the [RCCP] provides that the amended bylaws shall only be effective upon the issuance by the Commission of a certification that the same is in accordance with the [RCCP] and other relevant laws.
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> If the corporation decides to amend its bylaws to remove the requirement that the majority of its directors must be residents of the Philippines, such amendment will only take effect upon the Commission's issuance of the Certificate of Filing of Amended Bylaws. Prior to such issuance, the corporation is still required to make sure that the majority of its elected directors are residents of the Philippines.
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> Hence, the stockholders of the aforementioned corporation may elect directors who are not Philippine residents, pending the approval of its application for amendment of its bylaws by the Commission as long as majority of the directors are residents of the Philippines. (Emphasis supplied, citations omitted)

Oracle's by-laws and AOI which you have attached to your letter do not have a residency restriction. Article III, Section 1 of the by-laws on the Board of Directors only provides that "the Board of Directors be elected by and from the stockholders" without any other requirement for election.

Your letter stems from Item No. 18 in the Frequently Asked Questions (FAQs) page of the Commission's website which reads as follows:

> 18. What are the requirements on directors/trustees?
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> a) Natural person and is of legal age;
> b) Compliant with the required number required under the Corporation Code;
> c) ***Majority of the directors are residents of the Philippines***;
> d) Holder of at least one share or a member in case of non-stock corporations; and
> e) Not convicted by final judgement of an offense punishable by imprisonment for a period exceeding six years, or a violation of the Code committed within five (5) years prior to the date of his election or appointment.[5]

Please note that the contents of the FAQs cannot supersede the letter of the law.

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[2] Section 22, Batas Pambansa Blg, 86, Corporation Code of the Philippines, 01 May 1980.
[3] Section 22, Republic Act (R.A.) No. 11232, Revised Corporation Code, 23 February 2019.
[4] SEC-OGC Opinion No. 22-07 addressed to Law Offices of Disini Buted Disini dated 26 May 2022.
[5] Frequently Asked Questions (FAQs), SEC Website. Retrieved from: https://www.sec.gov.ph/faqs/#gsc.tab=0

As such, as to your first query, we answer in the affirmative.

Number of members of the Board of Directors

Section 22 of the RCCP[6] is silent as to the number of the members of the board of directors. Aside from Educational Corporations under Section 106[7], Religious Corporations under Section 114(f)[8], or One-Person Corporations under Section 116[9] of the RCCP, there is no requirement of a specific number as to the members of the board of directors.

Section 13(f) of the RCCP provides that the specific number is provided for under the corporation's own AOI, to wit:

> **Section 13.** ***Contents of the Articles of Incorporation.*** - All corporations shall file with the Commission articles of incorporation in any of the official languages, duly signed and acknowledged or authenticated, in such form and manner as may be allowed by the Commission, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
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> xxxxx
>
> (f) The number of directors, which shall ***not be more than fifteen (15) or the number of trustees which may be more than fifteen (15);*** (Emphasis and underscoring supplied)
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> xxxxx

This is in contrast to the previous provision on the Contents of the AOI under Section 14 of the CC, *viz.*:

> **Section 14.** ***Contents of the articles of incorporation.*** - All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
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> xxxx
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> 6. The number of directors or trustees, which shall ***not be less than five (5) nor more than fifteen (15);*** (Emphasis and underscoring supplied)
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> xxxx

Notably, the limitation on the number of the members of the board of directors in Section 14 of the CC was not reproduced in Section 13(f) of the RCCP. *Lex posteriori derogat legi priori* applies. The later rule prevails over the earlier rule to the extent of the conflict.

From the foregoing, corporations other than Educational Corporations, Religious Corporations, and One-Person Corporations, ***must have at least two (2) directors or trustees.***

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[6] Section 14, Corporation Code, *supra* Note 2.

[7] Section 106 of the RCCP:

> ***Board of Trustees.*** -Trustees of educational institutions organized as nonstock corporations shall not be less than five (5) nor more than fifteen (15): *Provided*, That the number of trustees shall be in multiples of five (5).

[8] Section 114 of the RCCP provides the following:

> ***Religious Societies.*** - Unless forbidden by competent authority, the Constitution, pertinent rules, regulations, or discipline of the religious denomination, sect or church of which it is a part, any religious society, religious order, diocese, synod, or district organization of any religious denomination, sect or church, may, upon written consent and/or by an affirmative vote at a meeting called for the purpose of at least two-thirds (2/3) of its membership, incorporate for the administration of its temporalities or for the management of its affairs, properties, and estate by filing with the Commission, articles of incorporation verified by the affidavit of the presiding elder, secretary, or clerk or other member of such religious society or religious order, or diocese, synod, or district organization of the religious denomination, sect or church, setting forth the following:
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> xxxx
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> (f) The names, nationalities, and residence addresses of the trustees, not less than five (5) nor more than fifteen (15), elected by the religious society or religious order, or the diocese, synod, or district organization to serve for the first year or such other period as may be prescribed by the laws of the religious society or religious order, or of the diocese, synod, or district organization.
>
> xxxx

[9] Section 116 of the RCCP provides the following:

> ***One Person Corporation.*** - A One Person Corporation is a corporation with a single stockholder: *Provided*, That only a natural person, trust, or an estate may form a One Person Corporation.

As such, as to your second query, we likewise answer in the affirmative ***subject to further requirements that the Company Registration and Monitoring Department (CRMD) may impose***.

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.[10] 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

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