



GCG MEMORANDUM CIRCULAR NO. 2012 - 02 (RE-ISSUED)

**SUBJECT : REVISED INTERIM RULES ON *PER DIEMS* AND OTHER
COMPENSATION ENTITLEMENTS OF MEMBERS OF THE
GOVERNING BOARDS OF GOCCs COVERED BY R.A. 10149**

DATE : 02 May 2012

I. GCG MANDATE TO SET RULES ON THE *PER DIEM* AND OTHER COMPENSATION ENTITLEMENTS OF MEMBERS GOCC BOARDS

1. Section 23 of Republic Act No. 10149, otherwise known as the “GOCC Governance Act of 2011” (R.A. 10149), provides GCG the power to set the limits to the *per diem*, compensation, allowance, and incentive entitlements of members of the Board of Directors/Trustees of GOCCs (“Governing Boards”), thus:

*Sec. 23. Limits to Compensation, Per Diems, Allowances and Incentives. – **The charters of each of the GOCCs to the contrary notwithstanding**, the compensation, *per diems*, allowances and incentives of the members of the Board of Directors/Trustees of the GOCCs **shall be determined by the GCG using as reference, among others, Executive Order No. 24 dated February 10, 2011;** *Provided, however*, That Directors/Trustees shall not be entitled to retirement benefits as such director/trustees. x x x.¹*

Such authority of the GCG is further affirmed under Section 20 of R.A. 10149, which in effect provides that Directors and Officers shall hold in trust for the GOCC any amounts received in excess of “the *per diem* received for actual attendance in board meetings and the reimbursement for actual and reasonable expenses and incentives **as authorized by the GCG.**”²

2. As part of the Compensation and Position Classification System (CPCS) that the GCG is mandated to promulgate, and which shall be applicable to all GOCCs covered by R.A. 10149,³ the Commission shall be evolving a Directors’

¹Emphasis supplied.

²Emphasis supplied.

³R.A. 10149, “Sec. 8. Coverage of the Compensation and Position Classification System. – The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary

Compensation System (DCS) which shall pursue the principles laid out in Executive Order No. 7, s. 2011,⁴ using as starting point the base figures contained in Executive Order No. 24, s. 2011 (E.O. 24),⁵ and implementing the principles contained in the relevant provisions of R.A. 10149.

3. In the interim, the terms of E.O. 24, together with other relevant statutory provisions as indicated hereunder, constitute the rules and regulations pertaining to entitlement to *per diems* and other forms of compensation, as well as the limitation on the right to obtain reimbursements for expenses incurred, of members of the Governing Boards of GOCCs, unless otherwise formally amended or revised by the Commission pursuant to its power under Sections 20 and 23 of R.A. 10149.

II. BASES FOR THE REVISED INTERIM RULES ON *PER DIEM* AND OTHER COMPENSATION ENTITLEMENTS OF DIRECTORS'/TRUSTEES' OF GOCC BOARDS

1. **Formal Adoption of E.O. 24.** – A copy of E.O. 24 is attached hereto and made an integral part of this Memorandum as **ANNEX A**, and the particular provisions thereof as indicated immediately hereunder, including the contents of this Memorandum, are hereby formally promulgated as the “**Revised Interim Rules on *Per Diem* and Other Compensation Entitlements of Directors'/Trustees' of GOCC Boards Covered by R.A. 10149,**” thus:

Section 1. Policy Considerations

Section 2. Definition of Terms

Section 3. General Provisions

Section 6. GOCC Classification

**Section 7. Compensation of Members of the Board
of Directors/Trustees**

Section 8. Compensation Structure

Section 9. *Per Diems* for Board Meetings

Section 10. *Per Diems* for Committee Meetings

Section 12. Reimbursable Expenses

- 1.1. Performance-Based Incentives (PBIs) for GOCCs Boards as allowed under Section 11 of E.O. 24 are suspended until a comparative and comprehensive study has been undertaken by the GCG, with the results of which shall form part of the DCS that shall be promulgated as an integral part of the **CPCS FOR GOCCs**.

Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.”

⁴Entitled “Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and -Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and for Other Purposes.”

⁵Entitled “Prescribing Rules to Govern the Compensation of Members of the Board of Directors/Trustees in Government-Owned or -Controlled Corporations, Including Government Financial Institutions.”

2. Restitution Rule. – The applicable rule on Restitution shall be Section 24 of R.A. 10149 which provides:

SEC. 24. *Restitution.* – Upon the determination and report of the Commission on Audit (COA) that properties or monies belonging to the GOCC are in the possession of a member of the Board or Officer without authority, or that profits are earned by the member of the Board or Officer in violation of the fiduciary duty, or the aggregate *per diems*, allowances and incentives received in a particular year are in excess of the limits provided under this Act, the member of the Board or Officer receiving such properties or monies shall return the same to the GOCC.

Failure to make the restitution within thirty (30) days after a written demand has been served shall, after trial and final judgment, be punished by an imprisonment of one (1) year and a fine equivalent to twice the amount to be restituted and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

3. Constitutional Provisions Applicable. – The following provisions of the 1987 Constitution, as they are applicable to the GOCCs covered by R.A. 10149, are hereby made an integral part of the Revised Interim Rules, thus:

3.1. Section 6, Article VII, containing the *Rule on the Salaries and Other Emolument Entitlement of the President and the Vice President of the Philippines*:

ARTICLE VII

EXECUTIVE DEPARTMENT

SEC. 6. The President shall have an official residence. The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved. **They shall not receive during their tenure any other emolument from the Government or any other source.**⁶

3.2. Sections 3 and 13, Article VII, containing the *Cabinet Rule Against Dual or Multiple Offices or Employment Covering the President, Vice President, the Members of the Cabinet and their Deputies and Assistants*:

ARTICLE VII

EXECUTIVE DEPARTMENT

SEC. 3. x x x . **The Vice-President may be appointed as a Member of the Cabinet.** Such appointment requires no confirmation.⁷

SEC. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants **shall not, unless**

⁶Emphasis supplied.

⁷Emphasis supplied.

otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as Members of the Constitutional Commissions or the Office of the Ombudsman, or as Secretaries, Undersecretaries, Chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.⁸

- 3.3. Sections 7, Article IX-B, containing the *General Rule Against Dual or Multiple Offices or Employment of Public Officials, Not Covering Cabinet Officials*, thus:

ARTICLE IX-B

THE CIVIL SERVICE COMMISSION

SEC. 7. x x x Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

- 3.4. Section 8, Article IX-B, providing for the *Rule Against Additional or Double Compensation for Public Officials and Employees*:

ARTICLE IX

B. THE CIVIL SERVICE COMMISSION

SEC. 8. No Elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

- 4. Administrative Code Provisions Applicable.** – The following provisions of the Administrative Code of 1987⁹ are hereby made an integral part of the Revised Interim Rules, thus:

- 4.1. Section 56 of Book V, Title I, Subtitle A (CIVIL SERVICE COMMISSION), Chapter 7, on the *Rule Against Additional or Double Compensation*:

⁸Emphasis supplied.

⁹Executive Order No. 292, 25 July 1987, which was made effective on 23 November 1989 by Proclamation No. 495 of the Office of the President of even date.

Sec. 56. *Additional or Double Compensation.* – No elective or appointive public officer or employee shall receive additional or double compensation **unless specifically authorized by law** nor accept without the consent of the President, any present, emolument, office, or title of any kind from any foreign state.

Pensions and gratuities shall not be considered as additional, double or indirect compensation.¹⁰

4.2. Section 49 of Book IV (THE EXECUTIVE BRANCH), Chapter 10, on the *Rule Limiting to Two Additional Positions Where Multiple Positions Is Allowed for Members of the Executive Branch*, thus:

Sec. 49. *Inhibitions Against Holding More than Two Positions.* – Even if allowed by law or by the primary functions of his position, a member of the Cabinet, undersecretary, assistant secretary and other appointive official of the Executive Department may, **in addition to his primary position, hold not more than two positions in the government and government corporations and receive the corresponding compensation thereof**; *Provided*, That this limitation shall not apply to *ad hoc* bodies or committees, or to boards, councils or bodies of which the President is the Chairman.

If a Secretary, Undersecretary, Assistant Secretary or other appointive official of the Executive Department holds more than what is allowed in the preceding paragraph, he must relinquish the excess positions in favor of a subordinate official who is next in rank, but in no case shall any official hold more than two positions other than his primary position.¹¹

III. GCG RULINGS CONSTITUTING PART OF THE REVISED INTERIM RULES

The GCG has issued rulings to various GOCC applications under E.O. 24, which are hereby consolidated and made an integral part of the original Interim Rules, and which rulings are hereby amended by the changes introduced in this Revised Interim Rules, thus:

1. Distinguishing Between “Appointive Directors” and “Ex-Officio Directors”

1.1. The distinction between “Ex Officio Directors” and “Appointive Directors” is critical in determining who among the members of the Governing Boards are entitled to *per diems* under E.O. 24, acting as directors/trustees.

Likewise, since directors or trustees of GOCCs and Subsidiaries are by definition considered to be “public officers”¹² or “public officials”,¹³ then

¹⁰*Emphasis supplied.*

¹¹*Emphasis supplied.*

¹²Sec. 2(b), Anti-Graft and Corrupt Practiced Act (R.A. 3019, as amended): “Public officer: includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.”

¹³Sec. 3(b), Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713): “Public Officials: includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.”

public officers who are members of GOCC Boards, whether they are classified as “*Ex Officio* Members” or “Appointive Members”, would be governed by the rule against additional or double compensation governing public officials and employees.

1.2. Who Are “*Ex Officio* Directors” of GOCCs?

- 1.2.1. *Statutory “Ex Officio Director”*. – Both E.O. 24¹⁴ and R.A. 10149¹⁵ define an “*Ex Officio* Board Member” to mean “any individual who sits or acts as a member of the Board of Directors/Trustees by virtue of one’s title to another office, and without further warrant or appointment,”¹⁶ with the term “another office” pertaining to a public office.

Whenever a public official requires a formal appointment into a GOCC Board or requires a formal nomination and election into the Board in a stockholders’ or members’ meeting, then such appointed/elected director or trustee would **not** technically be an *Ex Officio* Board Member, and would in fact qualify to be an Appointive Director.

To illustrate, if the Charter of a Chartered GOCC provides for three (3) representatives from the government sector, those who are appointed by the President of the Philippines to fill those slots, are considered to be Appointive Members of the Board, even though the main consideration for their appointment or election into the GOCC Board is by virtue of their being public officials. (They would actually be “Appointive Directors from the Public Sector” as discussed below.)

To illustrate further, if the By-laws of a Nonchartered GOCC provides expressly that a seat in the Board is expressly reserved for a particular public office, e.g., Chairman of the Parent-Chartered GOCC, when such director-position is assumed by the incumbent of the indicated public office by virtue of such by-law provisions (without appointment or formal nomination and election), he would technically qualify as *Ex Officio* Director.

- 1.2.2. *Jurisprudential “Ex Officio Director”*. – There is a jurisprudential definition of “*Ex Officio* Member of the Board” that has evolved from decisions of the Supreme Court covering the application of Section 13, Article VII of the 1987 Constitution which essentially prohibits the President, the Vice-President, the Members of the Cabinet, their deputies and assistants (hereinafter referred to as “Cabinet Officials”), from holding any other office or employment during their tenure, **unless otherwise provided in the Constitution itself**, thus:

Where the law or the Charter of a GOCC designates Cabinet Officials to be members of the Governing Board of a GOCC, then:

- (a) They are deemed to be *Ex Officio* Members of the Board “as required by the primary functions of their office and constitute merely additional duties and functions to their primary office;” “[t]he additional duties must not only be

¹⁴Sec. 2(f).

¹⁵Sec. 3(i).

¹⁶*Emphasis supplied.*

closely related to, but must be required by the official's primary functions."¹⁷

Their being "*Ex Officio* Member of the Board" constitute mere "*designation*" or imposition of additional duties upon a person already in the public service by virtue of an earlier appointment, and does not constitute "any other office".¹⁸

- (b) Moreover, such Cabinet Officials:
- (i) "[C]annot receive any form of additional compensation by way of per diems and allowances" because their designation does not constitute an appointment to a another office to which they can draw compensation from such office;¹⁹ and
 - (ii) "[A]ny amount received by them in their capacity as members of the Board of Directors should be reimbursed to the government, since they are prohibited from collecting additional compensation by the Constitution."²⁰

1.2.3. If the Articles and/or By-laws of a Nonchartered GOCC provide that a seat in the Board is expressly reserved for a Cabinet Official, then according to the prevailing jurisprudence covering Section 13, Article VII of the 1987 Constitution, such provision would be unlawful since it is only Legislature which can lawfully designate additional duties pertaining to the primary functions of Cabinet Officials.

1.3. Who Are "Appointive Directors" in the GOCC Sector?

1.3.1. *Statutory Definition of "Appointive Director"*. – Section 3(b) of R.A. 10149 defines an "Appointive Director" as follows:

(b) *Appointive Director* refers to:

- (1) In the case of chartered GOCCs, all members of its Board of Directors/Trustees who are not *ex officio* members thereof;
- (2) In the case of nonchartered GOCCs, members of its Board of Directors/Trustees whom the State is entitled to nominate, to the extent of its percentage shareholdings in such GOCC; and
- (3) In the case of subsidiaries and affiliates, members of its Board of Directors/Trustees whom the GOCC is entitled to nominate to the extent of its percentage shareholdings in such subsidiary or affiliate.

¹⁷*Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991); *Betoy v. The Board of Directors, National Power Corporation*, G.R. Nos. 156556-57, 04 October 2011.

¹⁸*National Amnesty Commission v. COA*, 437 SCRA 655 (2004); *Betoy v. The Board of Directors, National Power Corporation*, G.R. Nos. 156556-57, 04 October 2011.

¹⁹*Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991); *Betoy v. The Board of Directors, National Power Corporation*, G.R. Nos. 156556-57, 04 October 2011.

²⁰*Betoy v. The Board of Directors, National Power Corporation*, G.R. Nos. 156556-57, 04 October 2011.

1.3.2. By reason of the statutory definitions, there are actually two types of “Appointive Directors”, namely:

- (a) Appointive Directors, who are public officials **outside the coverage of Section 13, Article VII of the 1987 Constitution**,²¹ and who are formally appointed by the President of the Philippines into the Governing Board of a GOCC, even if one of the requirements for his/her qualification is his/her being in the public service (hereinafter referred to as “Appointive Directors from the Public Sector”); and
- (b) Appointive Directors, who are appointed from the private sector by the President of the Philippines into the Governing Board of GOCCs (hereinafter referred to as “Appointive Directors from the Private Sector”).

2. Restrictive Delineation of the Compensation Structure for Members of the Boards of Directors/Trustees of GOCCs

2.1. *Board Compensation Limited to Per Diem and Performance-Based Incentives (PBI)*. – Section 8 of E.O. 24 defines the “Compensation Structure” for members of the Governing Board of GOCCs to be *limited to the following components*:

- (a) *Per Diems*, but only up to the limits provided for under Sections 9 and 10; and
- (b) Performance-Based Incentives (PBI), as limited under Section 11 (and which are in the interim suspended).

2.1.1. *Per Diems Treated as “Compensation”*. – Section 8 of E.O. 24 operates within the context of treating *per diems* as compensation given to members of the Governing Boards of GOCCs, and Section 2(i) thereof defines “*Per Diems*” as “Compensation granted to members of the Board of Directors/Trustees of a GOCC for attendance in meetings.”

Section 3(s) of R.A. 10149 also defines “*Per Diems*” as “compensation granted to members of the Board of Directors or Trustees of a GOCC for actual attendance in meetings.”

The statutory treatment of *per diems* as a form of compensation to members of the Board for actual attendance in meetings formally adopts a line of Supreme Court decisions²² which have ruled to that

²¹It is not legally allowed for a Cabinet Official to ever fall into the category of Appointive Directors from the Public Sector because the restrictive provisions of Section 13, Article VII of the 1987 Constitution requires that the exception against dual or multiple positions or employments can only be provided for in the Constitution, or a mere designation of additional duties in an *ex officio* capacity as provided for by law. A statutory provision expressly providing for the **appointment** of a Cabinet Official into the Governing Board of any GOCC would be unconstitutional; his statutory **designation** to the Governing Board of any GOCC must always be in an *ex officio* capacity.

²²“For such attendance, therefore, he is not entitled to collect nay extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution.” *Civil Liberties Union v. Executive Secretary*, 194 SCRA 315, 335 (1991).

effect, and effectively rejects another line of decisions which treat of *per diem* as merely “reimbursement of expenses incurred in attendance of meetings.”²³

- 2.2. *Absolute Ban of Retainer Fees and Stock Plans as Part of Board Compensation.* – Section 8 of E.O. 24 also provides that retainer fees and stock plans are absolutely not allowed to be given to, and received by, members of the Governing Boards of GOCCs as part of their compensation, acting as such directors/trustees.

The applicable rule is now Section 20 of R.A. 10149, which considers such items when received by GOCC Directors as trust properties held on behalf of the GOCC they represent, thus:

SEC. 20. *Trustee Relation to the Properties, Interests and Monies of the GOCC.* – Except for the *per diem* received for actual attendance in board meetings and the reimbursement for actual and reasonable expenses and incentives as authorized by the GCG, any and all realized and unrealized profits and/or benefits including, but not limited to, the share in the profits, incentives of members of the Board or Officers in excess of that authorized by the GCG, stock options, dividends and other similar offers or grants from corporations where the GOCC is a stockholder or investor, and any benefit from the performance of members of the Board or Officers of the Corporation acting for and in behalf of the GOCC in dealing with its properties, investments in other corporations, management of subsidiaries and other interest, are to be held in trust by such member of the Board or Officer for the exclusive benefit of the GOCC represented.

- 2.3. *Salaries, Allowances, Benefits and Other Bonuses As Prohibited Forms of Board Compensation.* – Section 8 of E.O. 24 provides that salaries, allowances, benefits and other bonuses are not allowed to be given to the members of the Board, “*except when specifically authorized by law or the charter and approved by the President of the Philippines; provided that even when so allowed the total of the foregoing compensation and per diems shall not exceed the limits stipulated under Sections 9 and 10.*”

The afore-quoted Section 20 of R.A. 10149 also governs the treatment of unwarranted salaries, allowances, benefits and other bonuses received by members of the Governing Boards of GOCCs, as being thereby held in trust for the GOCC they represent.

- 2.4. *Reimbursable Expenses Should Not Be Used as a Form of Compensation.* – Section 12 of E.O. 24 ensures that GOCC Directors do not abuse the structure of reimbursement of expenses as a means to gain indirect compensation by:

- (a) Making it a matter of policy that expenses of members of the Governing Board to attend Board and other meetings

Also *GSIS v. CSC*, 245 SCRA 179 (1995); *De la Cruz v. COA*, 371 SCRA 157 (2001); *Baybay Water District v. COA*, 374 SCRA 482 (2002); *De Jesus v. CSC*, 471 SCRA 624 (2005); *Bitonio, Jr. v. COA*, 425 SCRA (2004); *National Amnesty Commission v. Commission on Audit*, 437 SCRA 655 (2004); *Cabili v. Civil Service Commission*, 492 SCRA 252 (2006).

²³*Lexal Laboratories v. Nat'l Chemical Industries Workers Union*, 25 SCRA 668 (1968); *GSIS v. Baradero*, 245 SCRA 179 (1995).

and discharge their official duties *shall be disbursed directly by the GOCC*;

- (b) The only time that Directors obtain a reimbursement of expenses can be:
 - (i) “when due only to the exigency of the service and subject to the submission of receipts”; and
 - (ii) limited only to transportation expenses for attending meetings; travel expenses for official travels; communications expenses; and meals during business meetings.

3. **EX OFFICIO DIRECTORS: Rules on Entitlement/Non-Entitlement to Per Diems**

3.1. ***Ex Officio Directors Are Generally Not Entitled to Per Diems and Other Allowable Compensations with the Parent/Holding GOCC*** – Section 7(a) of E.O. 24 specifically prohibits Department Secretaries, Undersecretaries, Assistant Secretaries **and other government officials**, who are *Ex Officio* Board Members, **including their Authorized Alternates/Representatives**,²⁴ from receiving any form of *per diem* and other forms of compensations “for their services as such,” thus:

- a) Department Secretaries, Undersecretaries, Assistant Secretaries and other government officials, who are *Ex-Officio* Board Members, including their Authorized Alternates/Representatives, shall not be entitled to any additional compensation for their services as such;

With respect to Non-Cabinet Officials, the aforementioned *executive order provision* conflicts with the *statutory provisions* found in Section 49, Chapter 10, Book IV of the Administrative Code of 1987, which allows in the Executive Department *limited multiple positions, with compensation*, thus:

Sec. 49. *Inhibitions Against Holding More than Two Positions.*
– **Even if allowed by law or by the primary functions of his position**, a member of the Cabinet, undersecretary, assistant secretary and other appointive official of the Executive Department may, **in addition to his primary position, hold not more than two positions in the government and government corporations and receive the corresponding compensation thereof**; *Provided*, That this limitation shall not apply to *ad hoc* bodies or committees, or to boards, councils or bodies of which the President is the Chairman.

x x x

3.1.1. ***Resolution of the Conflict with Respect to Cabinet Officials.*** –

²⁴“The agent, alternate or representative cannot have a better right than his principal, the *ex officio* member. The laws, rules, prohibitions or restrictions that cover the *ex officio* members apply with equal force to his representative. In short, since the *ex officio* member is prohibited from receiving additional compensation for a position held in an *ex officio* capacity, so is his representative likewise restricted.” *National Amnesty Commission v. COA*, 437 SCRA 655, 668 (2004).

When it comes to *Ex Officio* Directors who are Cabinet Officials, the non-entitlement clause under Section 7(a) of E.O. 24 prevails over the limited entitlement clause under Section 49, Chapter 10, Book IV of the Administrative Code of 1987 Cabinet Officials, because the former rule is consistent with standing jurisprudence under Section 13, Article VII of the 1987 Constitution, where the Supreme Court held that no *per diems* or any other form of compensation may be allowed to Cabinet Officials who become *Ex Officio* Directors of GOCCs.²⁵

3.1.2. Resolution of the Conflict with Respect to Non-Cabinet Officials. –

When it comes to Non-Cabinet Officials who become *Ex Officio* Directors, the non-entitlement clause under Section 7(a) of E.O. 24 prevails over limited-multiple-position-with-compensation rule under Section 49, Chapter 10, Book IV of the Administrative Code of 1987, because the former rule is consistent with prevailing jurisprudence that an *ex officio* position is not “another office” but merely a designation of additional duties to the primary office, and would not authorize the drawing of additional *per diems* and other allowance compensation, thus:

The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. . . . For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a *per diem* or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution.²⁶

3.2. Ex Officio Directors Are Generally Not Entitled to Per Diems and Other Allowable Compensations Given by the Subsidiary or Affiliate.

3.2.1. *Obligation to Remit to the Parent/Holding GOCC the Per Diems and Other Forms of Compensation Received.* – Section 7(c) of E.O. 24 obliges *Ex Officio* Directors to remit to the GOCC represented (*i.e.*, Parent/Holding GOCC) the *per diems* and other forms of compensation they may have received or be entitled from the Subsidiaries and Affiliates (“private corporations”) wherein a GOCC has investment, thus:

c) Compensation granted to *Ex-Officio* Board Members of subsidiaries or private corporations wherein a GOCC has investments shall accrue to the GOCC represented;

As previously discussed, Section 20 of R.A. 10149 governs the treatment of *per diems* and other forms of compensation that have been received by *Ex Officio* Directors but who were disqualified from

²⁵*Betoy v. The Board of Directors, National Power Corporation*, G.R. Nos. 156556-57, 04 October 2011.

²⁶*Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, 335 (1991).

receiving such items for themselves.

4. **APPOINTIVE DIRECTORS FROM THE PUBLIC SECTOR: Rules on Entitlement/Non-Entitlement to *Per Diems* and Other Forms of Compensation**

4.1. ***Rules of Entitlement/Non-Entitlement Pertaining to Appointive Directors from the Public Sector When It Comes to the Parent/Holding GOCC Primary Appointed To.*** – There are three legal provisions governing the entitlement or non-entitlement of Appointive Directors from the Public Sector to receive *per diems* given to the members of the Governing Boards of GOCCs to which they are primarily appointed to (*i.e.*, Parent/Holding GOCC), namely:

- (a) Section 7(b) of E.O. 24 which provides that “Appointive . . . Board Members may receive compensation as set forth herein unless specifically prohibited by law or Charter;”
- (b) The rule against additional or double compensation, as mandated in Section 8 of Article IX-B of the 1987 Constitution, and implemented under Section 56 of Book V, Title I, Subtitle A, Chapter 7 of the Administrative Code of 1987; and
- (c) The rule on “*limited multiple positions, with compensation*” as provided for under Section 49 of Book IV, Chapter 10 of the Administrative Code of 1987.

There is a conflict between and among the three legal provisions: Section 7(b) of E.O. 24 and Section 49 of Book IV, Chapter 10 of the Administrative Code of 1987 authorize Appointive Directors from the Public Sector to receive *per diems* and other allowable compensation given to the members of the Governing Board of Parent/Holding GOCCs; whereas, Section 8 of Article IX-B of the 1987, and as implemented in Section 56 of Book V, Title I, Subtitle A, Chapter 7 of the Administrative Code would disqualify such public official from receiving any form of *per diem* and other allowable compensation from the Parent/Holding GOCCs (as it would amount to additional or double compensation), *except in the case of a Chartered Parent/Holding GOCC where the Charter expressly allows the payment of per diems and other allowable compensation to the members of the Governing Board.*

Neither Section 7(b) of E.O. 24 nor Section 49 of Book IV, Chapter 10 of the Administrative Code of 1987 can be considered as the exception to the rule against double compensation because the prevailing doctrine is that found in *Sadueste v. Municipality of Surigao*,²⁷ that the meaning of the phrase “*unless specifically authorized by law*” does not cover a general grant of authority under statutory law for all government officers (such as in that case for all district engineers in that case), but that: “The authority required by the Constitution to receive additional or double compensation is a specific authority given to a particular employee or officer of the Government because of peculiar or exceptional reasons warranting the payment of extra or additional compensation.”²⁸ Besides, E.O. 24 does not

²⁷72 Phil. 485 (1941).

²⁸*Ibid*, at pp. 487-488.

qualify to fall into the category “specifically authorized by law.”

4.1.1. Resolution of the Conflict in Chartered Parent/Holding GOCCs. –

- (a) When there is a specific provision in the Charter providing for the payment of *per diems* to the members of the Governing Board, Appointive Directors from the Public Sector shall be authorized to receive said *per diems* to the extent of the limitations provided for under Section 9 and 10 of E.O. 24, since the charter provision is equivalent to the exception “*unless specifically authorized by law;*”
- (b) When there is no provision in the Charter providing for the payment of *per diems* to the members of the Governing Board, Appointive Directors from the Public Sectors are wholly unauthorized to receive any *per diems* or other form of compensation from the Parent/Holding GOCC.

4.1.2. Resolution of the Conflict in Nonchartered Parent/Holding GOCCs. – Regardless of what may be provided for in the Articles and/or By-laws, Appointive Directors from the Public Sector are wholly unauthorized to receive any *per diems* or any other form of compensation from the Nonchartered Parent/Holding GOCCs, since Articles and By-law provisions are not equivalent to statutory provisions to all within the exception “*unless specifically authorized by law.*”

4.2. Limitation on the Entitlement to Receive Per Diems and Other Forms of Compensation from Subsidiaries and Affiliates. – Section 7(c) of E.O. 24, which pertains to Appointive Directors from the Public Sector since it obligates them to receive on behalf of, and to remit to, the Parent/Holding GOCC all forms of *per diem* and other compensation received from a Subsidiary or Affiliate, thus:

- c) Compensation granted to *Ex-Officio* Board Members of subsidiaries or private corporations wherein a GOCC has investments shall accrue to the GOCC represented;

It cannot be legally assumed that the afore-quoted Section 7(c) should pertain only to *Ex Officio* Directors because almost all Subsidiaries (Nonchartered GOCCs), and definitely all Affiliates (private corporations), would necessarily be corporations organized under the Corporation Code of the Philippines, and usually every appointment/election thereto as a member of the Governing Board, even of a public official when done lawfully, would make the appointee an Appointive Director by definition under both E.O. 24 and R.A. 10149.

Therefore, the rule mandated under Section 7(c) of E.O. 24, as it applies to Appointive Directors from the Public Sector would be consistent with the rule against addition or double compensation, and would also be consistent with the principle provided for in Section 20 of R.A. 10149. Since Nonchartered GOCCs and private corporations have only Articles and By-laws which do not rise to the level of statutory law, then even when they expressly allow the

payment of dividends and other compensation to the members of the Board, they would not fall within the exception (“*unless specifically authorized by law*”) on the rule against additional or double compensation for public officials.

5. APPOINTIVE DIRECTORS FROM THE PRIVATE SECTOR: Rules on Entitlement/Non-Entitlement to *Per Diems* and Other Forms of Compensation

5.1. *Authority to Receive Per Diems and Allowable Compensation from the Parent/Holding GOCC Primarily Appointed To.* – Section 7(b) of E.O. 24 which specifically allows Appointive Directors from the Private Sector to receive *per diems* to the extent of the limits provided for under Sections 9 and 10 thereof, thus:

- b) Appointive or Elective Board Members may receive compensation as set forth herein unless specifically prohibited by law or Charter;

Other the limitations on the amounts of *per diems* that may be received for actual attendance at meetings as provided for in Section 9 and 10 in E.O. 24, the only other statutory limitation applicable to Appointive Directors from the Private Sector is found in Section 20 of R.A. 10149, to hold in trust for, and remit to, the GOCC any form of interests and monies received in excess of those they are authorized to receive by GCG.

5.2. *Authority to Receive Per Diems and Other Forms of Compensation from Affiliates.* – Section 7(d) of E.O. 24 authorizes the receipt of compensation given by Affiliates (“private corporations”) only to the extent of the amounts Appointive Directors are authorized to receive with the Parent/Holding GOCC he/she represents, and remit to the GOCC represented all amounts received in excess of those amounts authorized, thus:

- d) Compensation granted to Appointive or Elective Board Members representing a GOCC in a private corporation where the GOCC has investments shall not exceed the allowable compensation of the members of the Board of Directors/Trustees of the GOCC represented. Any excess shall accrue and be remitted to the GOCC represented within fifteen (15) days.

Section 7(d) actually authorizes the payment of double compensation to the Appointive Director from the Private Sector, namely:

- (a) The *per diems* for actual attendance of Board and Committee meetings paid by the Holding GOCC at the limitations set in Sections 9 and 10 of E.O. 24;

- and -

- (b) The compensation paid by the Affiliate but at the same rate as the *per diems* paid by the Holding GOCC at the limitations set in Section 9 and 10 of E.O. 24;

BUT: with the excess to be remitted to the Holding GOCC.

The rule against additional or double compensation in government service does apply in this case because technically and legally speaking, the *per diems* and compensation paid by the Affiliate (“private corporation”) do not come from government funds, and the service rendered as Appointive Director in the Affiliate (“private corporation”) is not public service. Consequently, the limitations placed upon such Appointive Directors is by reason that they remain public officers as official nominees of the Holding GOCC to the Affiliates.

5.3. Authority to Receive Per Diems and Other Allowable Compensation from Subsidiaries and Second GOCC. – Strictly speaking, Section 7(d) of E.O. 24 as it refers particularly to “a *private corporation where the GOCC has investments,*” does cover a Subsidiary which by definition is itself GOCC;²⁹ much less does it cover the appointment of Appointive Director from the Private Sector to another unrelated GOCC.

Unlike in an Affiliate situation where the Appointive Director of the Holding GOCC may be nominated and elected during the stockholders’ meeting to the Governing Board of the Affiliate, an Appointive Director can only become a member of the Governing Board of a Subsidiary by a formal appointment coming from the President of the Philippines from a shortlist prepared by the GCG as provided for in Section 15 of R.A. No. 10149. This is the same situation when it comes to a second appointment to another unrelated GOCC.

The rules that would apply then would be the constitutional and statutory rules on dual or multiple appoints, and on additional or double compensation.

5.3.1. Rule in a Subsidiary Situation. – Since an Appointive Director from the Private Sector has become a public official by his/her first appointment in the Parent GOCC, strictly speaking he/she can only be appointed to a Subsidiary when “allowed by law or by the primary functions of his position,” as provided for under Section 49, of Book IV, Chapter 10 of the Administrative Code of 1987.

Consequently:

- (a) If his/her appointment to the Subsidiary is contrary to law, he/she has no authority to receive any *per diem* or other forms of compensation to an office to which he has no authority to fill-up, and all amounts received must actually be remitted to the Parent GOCC;
- (b) If his/her appointment to the Subsidiary is allowed by law or by the primary functions of his/her position, such as when he/she is appointed to the Subsidiary by reason of his being the Chairman and/or President of the Parent GOCC,

²⁹Section 3(z) in relation to Section 3(o) of R.A. No. 10149, where “Subsidiary” is defined as “a corporation where at least a majority of the outstanding capital stock is owned or controlled, directly or indirectly, through one or more intermediaries, by the GOCC;” and in turn “GOCC” is defined to include “a stock . . . corporation . . . owned by the Government of the Republic of the Philippines, directly or through its instrumentalities either wholly or, where applicable as the case of stock corporations, to the extent of at least a majority of its outstanding capital stock.”

he/she shall be entitled to receive the same amount of compensation from the Subsidiary as that of an Appointive Director serving in the Affiliate as authorized under Section 7(d) of E.O. 24, because such Appointive Director is expected to discharge to the Parent GOCC the same primary duties as that expected when representing a Holding GOCC in the Affiliate; but such entitlement shall cover not more than two (2) Subsidiaries.

5.3.2. Rule in a Second GOCC Situation. – Since an Appointive Director from the Private Sector has become a public official by his/her appointment in the first GOCC, strictly speaking he/she can only be appointed to a second GOCC when “allowed by law or by the primary functions of his position,” as provided for under Section 49, of Book IV, Chapter 10 of the Administrative Code of 1987.

Consequently:

- (a) If his/her appointment to the second GOCC is contrary to law, he/she has no authority to receive any *per diem* or other forms of compensation to an office to which he has no authority to fill-up, and all amounts received must actually be remitted to the Parent GOCC;
- (b) If his/her appointment to the second GOCC is allowed by law or by the primary functions of his/her position, his/her entitlement to *per diems* in the second GOCC shall be treated independently of what *per diems* and other compensation he/she is entitled to in the first GOCC, as mandated under Section 49, Book IV, Chapter 10 of the Administrative Code of 1987, but this shall be limited to at most two (2) GOCCs.

BY AUTHORITY OF THE COMMISSION:



CESAR L. VILLANUEVA
Chairman



MA. ANGELA E. IGNACIO
Commissioner



RAINIER B. BUTALID
Commissioner