



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

22 September 2015

SEC-OGC Opinion No.15-12
Non-Stock Savings and Loan Association;
Limitations as to the Compensation of Trustees

CAPT. EUSEBIO V. PEREZ (Ret.)
President
CAVITE NAVAL BASE SAVINGS
AND LOAN ASSOCIATION, INC.
Fort San Felipe, Cavite City

Sir:

This is in response to your letter seeking to be clarified on Section 30 of the Corporation Code, particularly on the manner of determining the honorarium to be given to the trustees of Cavite Naval Base Savings and Loan Association, Inc. (CNBSLAI). Specifically, you ask whether or not CNBSLAI should deduct the proposed honorarium of its Trustees in the net income of the previous year before computing the 10% allowable honorarium to be given to its Board of Trustees for the current year.

Section 30 of the Corporation Code provides, thus:

Sec. 30. Compensation of Directors. – In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors except for reasonable per diems; Provided, however, that any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. **In no case shall the total yearly compensation of directors, as such directors, exceed ten percent (10%) of the net income before income tax of the corporation during the preceding year.** (Boldfacing and underscoring supplied).

Under the afore-quoted section, there are two requisites before members of the board of directors can be granted compensation aside from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special meeting agree to give the directors compensation¹, which shall not exceed 10% of the net income before income tax for the preceding year. Since Section 30 is likewise applicable to non-stock corporations², it is reasonable to conclude that, in general, the trustees of non-stock non-profit corporations can be given compensation, aside from reasonable per diems, (1) when there is a provision in the by-

¹ SEC Opinion No. 52 dated 28 October 2003 addressed to Atty. Dominga F. Calanglang, citing Western Institute of Technology Inc. vs. Salas, G.R. No. 113032, 21 August 1997.

² Pursuant to the Corporation Code, Section 87, par. 2 – The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of Title XI.

laws fixing their compensation; and (2) when the majority of the members agree, at a regular or special meeting, to give compensation to the trustees.

Further, as to what constitutes "**net income before income tax of the corporation during the preceding year**", the Commission had previously opined that based on the legislative deliberations on the matter, it shall be computed based on the "**net income before income tax of the year during which the directors have served as such**".³ As explained by the lawmakers, the compensation paid to the directors pursuant to the provisions of the proviso will be considered as an expense during the year and therefore deducted from gross income in order to produce the net income before income tax.⁴

In another opinion⁵, the Commission quoted the pertinent portion of the legislative deliberations as follows:

"MR. ABELLO: Mr. Speaker, answering the objections of the Gentleman from Cebu, I wish only to advert to the fact that we are talking about net income for the year, yearly net income before tax. Let us suppose that a person serves as director of a corporation during 1979. He is not paid any compensation during 1979, except reasonable per diems, because the yearly net income for 1979 cannot be determined until after the end of the year. So, here comes 1980, when the net income for 1979 has been determined by not only the executives of the corporation but also by the internal and external auditors of the corporation, then in that case, the date of the payment to the directors is already during 1980; and therefore each director is paid his proportionate share of the yearly net income before tax for the year 1979. x x x the compensation of the director for one year is paid after the end of the year, and he is paid his proportionate share during the period that he has served as director. If he had served as director, for example not for the full year but for part of the year, the provisions of the by-laws or the provisions of the resolution approved by the stockholders authorizing the compensation, could include, as it usually includes, a provision that where a director has not served during the full year but during only a portion of the year, then he shall get a proportion of the compensation corresponding only to the period during which he had served. x x x"

It is a basic accounting rule that an expense should be recognized as an expense on the period it was incurred. This being the case, it is thus sufficiently clear that in determining what would be appropriate compliance with Section 30, the proposed compensation for the current year should not exceed 10% of the net income before income tax of the preceding year when the director or trustee served as such; without need of deducting the proposed compensation anew from the previous year's net income.

We note however that the By-Laws of CNBSLAI provide that the trustees may be authorized monthly compensation in the form of honorarium, salaries and allowances not to exceed thirty three percent (33%) of the gross income of the Association,⁶ which is inconsistent with what is allowed under Section 30.

More importantly, while it is settled that Section 30 of the Corporation Code may be similarly applicable to non-stock corporations, it is noted that CNBSLAI is a non-stock savings and loan association, governed primarily by Republic Act No. 8367 or the "Revised Non-Stock Savings and Loan Association Act of 1997". Thus, Section 30 of the Corporation Code should be read together with Section 14 of R.A. No. 8367. The latter provision reads, thus:

³ SEC Opinion dated 28 November 1995 addressed to Director Candon B. Guerrero.

⁴ Lopez, The Corporation Code Annotated, Volume One (1994), pages 462-463, citing Proceedings of the Batasan Pambansa on the Proposed Corporation Code, 11 March 1980.

⁵ SEC Opinion dated 21 May 1992 addressed to Mr. O. P. Victorino.

⁶ By-Laws of Cavite Naval Base Savings and Loan Association, Inc., Article VI, Section 2.

Section 14. Compensation of trustees, officers and employees. – No trustee, officer, or employee of an Association shall receive from such Association, and no Association shall pay to any trustee, officer, or employee of such Association, any commission, emolument, gratuity or reward based on the volume or number of loans made, or based on the interest or fees collected thereon. **Nothing in this Section prohibits or limits any of the following:**

- a) receipt or payment of salaries of trustees, officers and employees;
- b) receipt of payment of commissions to agents whether or not based on the volume or number of loans or on the interest or fees collected thereon; and
- c) receipt or payment of bonuses to trustees, officers or employees if such bonuses are based on the performance and not on the volume or number of loans made or on the interest or fees collected thereon.

All increase in the compensation, in any form, of all trustees and trustee-officers in excess of ten percent (10%) thereof per annum shall require the approval of the Bangko Sentral. (Boldfacing and underscoring supplied).

Under R.A. No. 8367, the extent of the Commission's authority over non-stock savings and loan associations is only insofar as the registration of the association to give it juridical personality.⁷ As such, the Commission does not approve any amendments or changes in the Articles of Incorporation and By-Laws of non-stock savings and loan associations without the prior endorsement and approval of the Bangko Sentral ng Pilipinas (BSP). Thus, any other concerns involving non-stock savings and loan associations, such as the applicability of Section 30 of the Corporation Code in lieu of Section 14 of R.A. No. 8367, should be addressed to the BSP which is the competent authority to determine such other issues. This is in accordance with the Commission's settled policy not to render opinions on matters involving the interpretation of administrative rules and issuances of other government agencies, considering that it is the primary regulatory agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances.⁸

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.⁹ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.


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⁷ SEC-OGC Opinion No. 12-09 dated 23 May 2012 addressed to RADM George Uy (Ret.).

⁸ SEC Memorandum Circular No. 15, series of 2003.

⁹ *Ibid.*