PART II

BSERVATIONS AND RECOMMENDATIONS

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1. **The PDGCC employees are still covered by Social Security System (SSS) membership, contrary to Government Service Insurance System (GSIS) Memorandum Circular No. 036, s. 2022, which requires the mandatory GSIS membership coverage of personnel of non-chartered Government-Owned and Controlled Corporations (GOCC), depriving the employees of the appropriate benefits due them upon retirement.**

1.1 PDGCC was created as a private entity by virtue of the Master Deed with Declaration of Restrictions pursuant to the provisions of RA No. 4726, known as the Condominium Act, and RA No. 1459, known as the Corporation Law.

1.2 On July 3, 2003, the PDGCC Board of Directors approved Board Resolution No. 07-002 acknowledging that PDGCC is a GOCC subject to existing laws, rules, and regulations applicable to GOCCs.

1.3 Notably, RA No. 11199, otherwise known as the "Social Security Act of 2018", specifically excludes all GOCCs from the coverage of the SSS. Section 8 (c) of said Law states:

> *SEC. 8. Terms Defined. - For purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:*
>
> *xxx*
>
> *(c) Employer – Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment,* ***except the government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government*** *xxx* (Emphasis supplied)

1.4 On the other hand, RA No. 8291, otherwise known as the "GSIS Act of 1997", took effect on June 24, 1997. Section 2 (c) of the said law defines employer as follows:

> *(c) Employer – The national government, its political subdivisions, branches, agencies or instrumentalities, including* ***government-owned or controlled corporations****, and financial institutions,* ***with original charters****, the constitutional commissions and the judiciary;* (Emphasis supplied)

1.5 The Office of the Government Corporate Counsel (OGCC) in its Opinion No. 126, s. 2021, dated April 28, 2021 opined that non-chartered GOCCs are within the ambit of the term "employer" as provided for under Section 2 (c) above, stating:

> *The phrases 'with original charter' use to qualify "government-owned and controlled corporations" under the definition of "Government Agency" and "Regular Members" in R.A. 8291's IRR* ***should not be interpreted in a manner that will place GOCCs (organized under the Corporation Code) in limbo and deprive their employees of social security coverage.*** (Emphasis supplied)

1.6 Pursuant to the approved GSIS Policy and Procedural Guidelines (PPG) No. 383-22 on GSIS membership coverage of personnel of GOCCs without original charter dated March 3, 2022, GSIS Memorandum Circular (MC) No. 036, s. 2022 of even date was issued outlining the policy guidelines on the same. Pertinent provisions read:

A. MEMBERSHIP

The following shall be considered in the GSIS membership:

1. *Employees of non-charted GOCCs regardless of status of their appointments, who are receiving fixed monthly compensation and have not reached the mandatory retirement age of 65 years at the time of the approval of their transfer from SSS to GSIS are considered as GSIS members, provided that the non-chartered GOCC to which they are employed:*

    a. *is under the supervision and regulatory functions of the Governance Commission for Government Owned or Controlled Corporations (GCG) in accordance with R.A. No. 10149 or the GOCC Governance Act of 2011;*

    b. *is subject to the audit jurisdiction of the Commission on Audit (COA);*

    c. *is not covered by a law which provides for a separate and non-GSIS retirement, separation, disability or survivorship benefits package; and*

    d. *has a duly executed Memorandum of Agreement (MOA) with GSIS with respect to the transfer of their membership from SSS to GSIS.*

xxx

4. *Since employees can only be under either SSS or GSIS, submission of waiver or request for exclusion by employees from GSIS membership shall not be allowed.*

1.7 Review of the payroll and disbursement vouchers of PDGCC disclosed that employees of the PDGCC are still covered by SSS membership as at December 31, 2022 despite being expressly excluded from the coverage of the SSS based on the Social Security Act of 2018 and being required to mandatorily adopt RA No. 8291, or the GSIS Act of 1997.

1.8 Non-transfer of the employees' membership from SSS to GSIS is contrary to GSIS MC No. 036, s. 2022, which requires the mandatory GSIS membership coverage of personnel of non-chartered GOCCs, thus, the PDGCC employees are deprived with the appropriate benefits due them upon retirement.

1.9 **We recommended that Management facilitate the transfer of the membership of the PDGCC employees from SSS to GSIS pursuant to the GSIS PPG No. 383-22 as supported by GSIS MC No. 036, s. 2022.**

1.10 Management committed to implement the same in CY 2023. In fact, the PDGCC had a meeting with the GSIS Officers on February 28, 2023 regarding the process and requirements of transfer of membership. GSIS Officers explained that the PDGCC must decide on the coverage of membership, whether retroactive or prospective coverage. Both coverages, especially retroactive coverage, will have financial implications with PDGCC and its employees. Thus, such options will be presented to the Board of Directors for their comments and/or approval. PDGCC will also coordinate with SSS to facilitate the transfer of membership to GSIS.

1.11 As an audit rejoinder, the Audit Team will monitor and evaluate the courses of actions taken and to be taken by the Management to comply with the recommendations.

2. The employer's share of Pag-IBIG contribution was not calculated based on the required two per cent of the maximum monthly compensation limit of P5,000, as provided for under Section 1, Rule VI of the Implementing Rules and Regulations (IRR) of RA No. 9679, resulting in over remittance totaling P313,171 for the CYs 2009 to 2022.

2.1 Section 1, Rule VI of the IRR of RA No. 9679, or the Home Development Mutual Fund (HDMF) Law of 2009, prescribes the rates and base amount of monthly contribution of the covered employees, to wit:

> a. ***Employees earning not more than One thousand five hundred pesos (P1,500.00) per month – one percent (1 %).***
>
> b. ***Employees earning more than One thousand five hundred pesos (P1,500.00) per month – two percent (2%).***
>
> c. ***All employers – two percent (2%) of the monthly compensation of all covered employees.*** (Emphasis supplied)

The maximum monthly compensation to be used in computing employee and employer contributions shall not be more than five thousand pesos (P5,000.00). xxx

A member may, however, be allowed to contribute more than what is required herein should he or she so desires. ***The employer****, however,* ***shall only be mandated to contribute what is required under these Rules unless the employer agrees to match the member's increased contribution.*** (Emphasis supplied)

xxx

2.2 Chapter VI.B(4) of the CPCS for GOCCs approved under EO No. 150, s. 2021, states that:

> *4.* ***Additional Allowances, Benefits and Incentives***. – *Upon application of the CPCS, all the allowances, benefits, and incentives (ABIs) of GOCC officers and employees, whether they are incumbents or new hires, shall be limited to those provided under the CPCS.* ***All additional compensation outside of the CPCS shall be approved by the Board, endorsed by the Supervising Agency, recommended by the GCG, and approved by the President of the Philippines.*** (Emphasis supplied)

2.3 It can be deduced from the provisions mentioned above that the maximum monthly contribution to be deducted from the employee and the employer's share should not exceed P100, which is two per cent of the maximum limit of P5,000 provided for in the HDMF Law of 2009.

2.4 However, review of the payroll of the PDGCC employees and remittances of Pag-IBIG contributions from CYs 2009 to 2022 revealed that the monthly employee and employer shares were computed at two per cent of the basic monthly compensation, disregarding the P5,000 limit provided in Section 1, Rule VI of the IRR of RA No. 9679. The summary of excess remittances for the years mentioned are as follows:

Year	Pag-IBIG Employer's Share		
	Actual remittance	**Allowed under RA No. 9679**	**Excess**
2009	7,973	2,400	**5,573**
2010	18,523	5,000	**13,523**
2011	24,218	5,900	**18,318**
2012	27,133	6,000	**21,133**
2013	28,127	6,000	**22,127**
2014	22,427	4,600	**17,827**
2015	26,235	4,600	**21,635**
2016	26,998	4,800	**22,198**

Year	Pag-IBIG Employer's Share		
	Actual remittance	Allowed under RA No. 9679	Excess
2017	30,283	5,300	**24,983**
2018	26,322	4,800	**21,522**
2019	27,823	4,800	**23,023**
2020	28,902	4,800	**24,102**
2021	36,473	5,200	**31,273**
2022	51,934	6,000	**45,934**
Total	**383,371**	**70,200**	**313,171**

2.5 Inquiry with Management disclosed that the ongoing practice is a mere continuance of a previous practice, and that no resolution was approved by the Board to support the employer's share on Pag-IBIG contribution higher than the amount allowed under RA No. 9679.

2.6 Although the employer is allowed to match the member's increased contribution, as an additional compensation, it shall be ultimately approved by the President of the Philippines as provided in Chapter VI.B(4) of the CPCS for GOCCs approved under EO No. 150, s. 2021.

2.7 Thus, PDGCC's excess remittances of employer's share of Pag-IBIG contributions totaling P313,171 from CYs 2009 to 2022, which is more than the allowed amount, constitute irregular expenditure.

2.8 **We recommended and Management agreed to strictly comply with the use of two per cent of the P5,000 maximum monthly compensation limit as reference in calculating the employer's share for Pag-IBIG contribution as provided for under RA No. 9679 and its IRR.**

2.9 **We further recommended that Management:**

a. **Request the Pag-IBIG Fund to apply the over remittances to future remittances of monthly contributions; and**

b. **Restitute the over remittances totaling P313,171 from CYs 2009 to 2022, in case the request is not granted by Pag-IBIG Fund.**

2.10 Management commented that the PDGCC will comply with the use of the two per cent of the P5,000 maximum monthly compensation limit in calculating the employer's share for Pag-IBIG contribution. With regard to the restitution of the over remittances, Management further commented that the current PDGCC employees will return the excess contribution on installment basis. As to the retired employees, PDGCC will try to seek reimbursement from them while for the deceased retirees, the signatories will reimburse the corresponding amount.

As an audit rejoinder, the Audit Team clarifies that the over remittance of employees' share is scoped out from the observation because it is an additional investment of the said employees, earning dividends and are payable to them upon optional or full withdrawal of their respective total accumulated values. However, excess remittance of the employer's share is a liability of the accountable officers who reviewed and approved the payment as proper. Nevertheless, the Audit Team will monitor and evaluate the courses of actions to be taken by the Management to comply with the audit recommendations.

3. The Chief Executive Officer and Appointive Directors of the PDGCC did not pass through the process of review and nomination of the GCG and approval of appointment by the President of the Philippines, contrary to Sections 15 and 16 of Chapter IV, RA No. 10149, resulting in the Corporation's inability to exercise check and balance.

3.1 Chapter 1 of RA No. 10149, otherwise known as GOCC Governance Act of 2011, defines Appointive Directors as:

Paragraph 2, Section 3b -

(2) In the case of non-chartered 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; xxx

Section 5(e) -

(e) In addition to the qualifications required under the individual charter of the GOCCs and in the bylaws of GOCCs, without original charters, the GCG shall identify necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors; xxx

3.2 Moreover, Chapter IV of RA No. 10149, states that:

Section 15 on the Appointment of the Board of Directors/Trustees of GOCCs -

An Appointive Director shall be appointed by the President of the Philippines from a short list prepared by the GCG.

Section 16 on Fit and Proper Rule -

All members of the Board, the CEO and other officers of the GOCCs including appointive directors in subsidiaries and affiliate corporations shall be qualified by the Fit and Proper Rule to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.

3.3 Likewise, GCG MC No. 2012-05 entitled Fit and Proper Rule for Appointive Directors and CEOs of GOCCs provides six criteria for the Minimum Qualifications of Appointive Directors and CEOs; nine criteria for Permanent Disqualification; and 21 criteria for Temporary Disqualification.

3.4 Lastly, Section 1, Article III of the Amended By-Laws of the PDGCC provides a section on composition, election and term of office which states that:

> *The Corporation shall be governed and its affairs managed and controlled by a Board of Directors composed of nine (9) members – eight (8) members of who shall be elected by and from among the non-delinquent members of the Corporation and one (1) ex-officio member to be appointed by the duly elected directors.*

3.5 In compliance with the amended By-Laws and in reference to the PDGCC Board of Directors (BOD) Minutes of Members' Meeting dated August 28, 2020, its members elected the current PDGCC Officers. However, inquiry with PDGCC personnel disclosed that there was no list of nominations for the PDGCC Board membership submitted to GCG, ergo, the members of the PDGCC BOD were not appointed by the President of the Philippines as required in pertinent provisions of RA No. 10149 as herein quoted in Paragraphs 6.1 and 6.2. Hence, they do not have an appointment from the OP.

3.6 Notably, RA No. 10149 took effect only in 2011 while the By-Laws of the PDGCC was inked in 1982. The PDGCC was not able to incorporate Section 15, Chapter IV of RA No. 10149 in their By-Laws. Further, it is observed that there are inconsistencies between the provisions of Section 15, Chapter IV of RA No. 10149 and Section 1, Article III of the Amended By-Laws of the PDGCC concerning the election and appointment of the Board of Directors of the Corporation. The former requires that the Appointive Director must be appointed by the President of the Philippines from a short list prepared by the GCG, while the latter requires that election be done by and from among the non-delinquent members of the Corporation and an ex-officio member to be appointed by the duly elected directors.

3.7 This is a reiteration of the audit observation embodied in the CY 2020 Annual Audit Report on the PDGCC and Management has been committing to make a follow-up letter to the GCG with regard to the process of designating officials from the unit owners to constitute the PDGCC's Board of Directors, but none was officially made as of Report date.

3.8 **We reiterated our prior year's audit recommendations that Management:**

a. Submit a list of nominations for the chief executive officer and appointive directors of the PDGCC to the GCG in accordance with the provisions of RA No. 10149; and

b. **Bring to the attention of the BOD the amendment of the PDGCC's By-Laws effecting the provisions of Section 15, Chapter IV of RA No. 10149.**

3.9 Management commented that the PDGCC sent a letter dated March 3, 2023, to the GCG reiterating the clarification and explanation on the prevailing factual scenarios and nature of the PDGCC. No reply yet has been received by them as of Report date.

4. **A net total area of 64.34 square meters was not included in the computation of assessment dues for the area occupied by the Bureau of the Treasury (BTr) and Office of the President of the Philippines (OP) from CYs 2020 to 2022, contrary to Section 4 (a) and (b), Part II of the Master Deed with Declaration of Restrictions (MDDR), and Section 1, Article V of the Amended By-Laws of the Palacio del Gobernador Condominium Corporation (PDGCC), due to miscalculation. Hence, the unit owners are not contributing to the maintenance and operating expenses based on their proprietary interests.**

4.1 Section 4, Part II of the MDDR of the PDGCC dated August 30, 1976 provides:

> *Section 4. Assessments: - (a) Assessments against Unit Owners or Purchasers for Common expenses (herein referred to as "Common Expenses") shall be made pursuant to the By-Laws of the Condominium Corporation and **in proportion to such Unit Owner's appurtenant interest in the Condominium Corporation** xxx.* (Emphasis supplied)
>
> *(b) Particular Units may also be subject to special assessments authorized in accordance with the Declaration of Restrictions or the By-laws of the Condominium Corporation for non-Common Expenses.*

4.2 Section 1, Article V of the Amended By-Laws of the PDGCC on Operating Expenses states that:

> *The **individual contribution of each member** to the common fund **shall be proportionate to their proprietary interest** or participation in the corporation. The members shall then replenish monthly the common fund with their determined share and/or consumption on any disbursement from the common fund.* (Emphasis supplied)

4.3 It has been the practice of the Corporation to bill monthly the unit owner/tenant based on the unit area it occupies and on the applicable rate of assessment dues per square meter for its maintenance and operating expenses. From CYs 2020 to 2022, the bases for the rates used in the computation of assessment dues are the following Board Resolutions:

Basis	Effectivity	Coverage	Monthly rate per sq.m.
Board Resolution No. 01 dated January 4, 2018	January 2018	All unit owners/tenants	P60
Board Resolution No. 08 dated October 27, 2020	January 2021	Line agencies of the National Government and small government offices	P75
Board Resolution No. 09 dated October 27, 2020	January 2021	Constitutional Commissions, GOCCs and GFIs	P100

4.4 For the same periods, the computation of the monthly assessment dues per unit owner is summarized as follows:

Owner	CY 2020		CY 2021		CY 2022	
	Area (Sq.m.)	Amount*	Area (sq.m.)	Amount**	Area (sq.m.)	Amount**
BTr	15,606.71	936,402	15,606.31	1,187,596	15,606.31	1,187,596
OP	9,568.28	574,097	9,568.28	938,201	9,568.28	938,201
Intramuros Administration (IA)	3,710.60	222,636	3,710.60	278,295	3,710.60	278,295
	28,885.59	**1,733,135**	**28,885.19**	**2,404,092**	**28,885.19**	**2,404,092**

* at P60 per sq.m.
** at P75 per sq.m for line agencies of National Government offices and at P100 per sq.m for Constitutional Commissions, GOCCs and GFIs

4.5 Review and analysis of the foregoing revealed that the PDGCC overbilled in CY 2020 the BTr and Commission on Election (COMELEC) by 0.40 sq.m. and 47.66 sq.m., respectively, and underbilled the Land Bank of the Philippines (LBP) by 69.24 sq.m. from CYs 2020 to 2022, computed as follows:

Unit owner/ Tenant	Year/s	Owned* (sq.m.)	Billed (sq.m.)	Over/(under)bill	
				Area (sq.m.)	Assessment dues
BTr	2020	15,606.31	15,606.71	**0.40**	**288**
	2021-2022	15,606.31	15,606.31	**0.00**	**0**
OP/COMELEC	2020	8,052.05	8,099.71	**47.66**	**34,315**
	2021	8,052.05	8,099.71	**47.66**	**57,192**
	2022	8,052.05	8,099.71	**47.66**	**57,192**
OP/LBP	2020	792.74	723.50	**(69.24)**	**(49,853)**
	2021	792.74	723.50	**(69.24)**	**(83,088)**
	2022	792.74	723.50	**(69.24)**	**(83,088)**
IA	2020-2023	3,710.60	3,710.60	**0.00**	**0**
				(64.34)	**(67,042)**