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2023 OGCC YEAR-END REPORT

In the year 2023, the Philippines witnessed and experienced notable occurrences and advancements across diverse sectors. Despite encountering persistent challenges, notably the enduring effects of the COVID-19 pandemic and its economic ramifications, the nation exhibited resilience and steadfastness in overcoming these hurdles.

Similarly, the Office of the Government Corporate Counsel (OGCC) maintains a steadfast commitment to upholding legal principles and fostering good governance. This annual report stands as a testament to the collective diligence and unwavering dedication of the agency, its lawyers and administrative staff, with the invaluable support of the Government-Owned and Controlled Corporation's (GOCC), its stakeholders and collaborators. Together, they have navigated through adversities, capitalized on opportunities, and attained noteworthy milestones, propelling the office forward in its mandate to provide exemplary legal services to the government corporations.

I. LEGAL SERVICES

A. LITIGATION

The core responsibility of the OGCC, as the statutory counsel for all GOCCs, involves representing them in legal proceedings before courts of law, arbitral tribunals, and quasi-judicial bodies. It is noteworthy that a significant decline in the caseload managed by the OGCC was observed for the year 2023.

One reason for the reduced case volume managed by the OGCC stems from enhanced compliance and risk management practices adopted by GOCCs as directed by the OGCC. **Additionally, the OGCC's successful implementation of mediation or alternative dispute resolution mechanisms has led to fewer cases resulting in formal legal proceedings.**



The Table below shows the number of cases the OGCC has handled from 2021 to 2023:

CASES HANDLED BY THE OGCC FOR 2021-2023

CASES HANDLED BY OGCC	2021	2022	2023
Number of Cases	6,546	7,272	6,151
Newly Endorsed Cases	954	451	345
Cases decided with Finality	228	458	423
Favorably Decided	157	347	294
Percent of Favorable Decisions (%)	69%	75%	70%

In comparison to the total number of cases handled in 2022, the OGCC noticeably handled fewer cases totaling with a 15.42% decrease in number of cases handled; and observed a 23.5% decline on newly endorsed cases. This is attributed to the withdrawal of the Land Bank of the Philippines-Department of Agrarian Reform Adjudication Board (LBP-DARAB) cases previously handled by the Office pursuant to the 2 June 2021 Memorandum of Agreement (MOA) between LBP and Department of Agrarian Reform (DAR), as well as the increase in cases that have been decided with finality.

Throughout the year, OGCC encountered a series of cases characterized by complex legal intricacies and contentious disputes, where established legal precedents offered little clarity. Despite the unwavering competence of our OGCC lawyers, this challenging landscape led to a decrease in the proportion of cases securing favorable decisions.

The OGCC has directed that all litigation of cases of GOCCs shall be handled by the OGCC and no longer allows deputization of private counsels, as much as possible.

Even so, some of the significant cases successfully handled by the OGCC are the following:

- *Clark Development Corporation v. Chevron Philippines Inc. CA No. 23-26-CV*



The court ruled in favor of the Clark Development Corporation, upholding the imposition of royalty fees on Chevron Philippines, Inc., stating that the fees were primarily for regulatory purposes and necessary for the safety and security of the Clark Special Economic Zone.

- *MWSS vs. Maynilad Water Services, Inc. G.R. No. 239938*
In the case of *Maynilad Water Services, Inc. vs. National Water Resources Board*, the Supreme Court (SC) ruled against the practice of allowing public utilities, specifically *Maynilad* and *Manila Water*, to include corporate income taxes as part of their operating expenses recoverable from consumers. The SC emphasized that income taxes are inconsistent with the nature of operating expenses, which should be directly related to revenue generation and benefit consumers.

Maynilad and *Manila Water*, as concessionaires of Metropolitan Water and Sewerage Systems (MWSS), initially included corporate income taxes in their tariff computations during rate rebasing exercises. However, following the SC's decision in *Republic vs. Meralco*, which prohibited the inclusion of income taxes as operating expenses for public utilities, the MWSS issued a Notice of Extraordinary Price Adjustment, prompting a dispute between the parties.

Subsequent rate rebasing exercises saw the MWSS reiterating its stance against allowing the recovery of corporate income taxes by the concessionaires. Despite arbitration attempts by *Maynilad* and *Manila Water*, the SC ultimately ruled against them, asserting that they are considered public utilities and therefore bound by the precedent set in the *Meralco* case. Even if they were not classified as public utilities, the concessionaires could not recover income taxes as they do not fall under the category of business taxes.



B. CONTRACT REVIEW AND LEGAL OPINION

The primary functions of the OGCC include the review of contracts and the rendition of legal opinions. Notably, the OGCC has once again secured its ISO 9001:2015 certification, demonstrating adherence to rigorous standards in the preparation of Contract Reviews and Legal Opinions.

The OGCC has established a mandated timeline of twenty (20) working days for the completion of legal opinions or contract reviews. This process, referred to as the "Receipt-to-Release" or simply the "R2R" process, ensures timely and efficient response to requests while ensuring compliance with statutory requirements.

1) CONTRACT REVIEWS

Remarkably, in 2023, the OGCC issued the highest number of Contract Reviews. The table below shows the number of Contract Reviews released for periods 2021-2023:

CONTRACT REVIEWS ISSUED FOR 2021-2023

Year	2021	2022	2023
Total Number of Contract Reviews Issued within the year	1,979	1,833	2,538
Number of New Requests Received	2,118	1,691	3,015
Disposition Rate (%)	100%	100%	100%

The Table shows a 38.46% increase in the total number of Contract Reviews issued within the year from 2022 to 2023. **These contracts involved a total amount of more than PhP59,779,263,332.96.** The rise in issued contract reviews is attributed to the issuance of OGCC Memorandum Circulars, which furnished directives regarding the referral process for requests and mandated the undertaking of post-execution reviews for pertinent contracts of client GOCCs.

Some of the most significant contracts or agreements which the OGCC reviewed in 2023 are as follows:



- *Contract Review No. 1363 dated 29 May 2023 (SSS)*

This is a request from Social Security System (SSS) for review and approval of the Draft Corporate Notes Facility Agreement by and among San Miguel Global Power Holdings Corporation (SMGP); China Banking Corporation; China Bank Capital Corporation and Bank of Commerce through its Trust Service Group. This originated from the recommendation of SSS' Fixed Income Investment Division to consider investing SSS' funds in SMGP's notes offer, as it aligns with SSS requirements outlined in the Revised Guidelines for SSS Investment in Corporate Fixed Income Securities. Amount involved: PhP5,000,000,000.00

- *Contract Review No. 1437 dated 02 June 2023 (LBP)*

This refers to the Land Bank of the Philippines' (LBP) request for review of the draft Notes Facility and Security Agreement to be entered among ASA Philippines Foundation, Inc., BDO Capital & Investment Corporation, Rizal Commercial Banking Corporation - Trust and Investment Group, BDO Unibank, Inc. and LBP.

LBP represented that it intends to participate as a lender (of up to PhP2.5 billion) in a 5-year syndicated Corporate Notes Facility to fund the working capital of ASA Foundation, Inc., a micro-finance NGO which provides access to financial services and other development opportunities and social support to marginalized sectors.

- *Contract Review No. 1890 dated 24 August 2023 (DAP)*

This refers to the request of the Development Academy of the Philippines (DAP) for review of the draft Bidding Documents to be used for the procurement of the contract for the completion of the construction of the fourteen-story reinforced concrete building (Project), New Training Building (NTB) at the DAP Conference Center in Tagaytay City. The Project's approved budget for the contract (ABC) amounts to a total of PhP1,715,000,000.00

- *Contract Review No. 2404 dated 21 December 2023 (PCSO)*

Pursuant to OGCC Memorandum Circular 2023-004 a post-execution contract review of the Memorandum of Agreement (MOA) for a 1-year



trial period of the Web-based Application Betting Platform, which was signed by the Philippine Charity Sweepstakes Office (PCSO) and Pacific Online Systems Corporation was made by the OGCC. The subject contract was later brought up for discussion in a senate hearing.

2) LEGAL OPINIONS

The table below shows that the number of requested and released Legal Opinions for periods 2021-2023:

LEGAL OPINIONS RENDERED FOR 2021-2023

Year	2021	2022	2023
Number of Legal Opinions Rendered within the year	531	374	307
Number of Requests Received	563	388	380
Disposition Rate (%)	100%	100%	100%

The Table reveals a slight decrease in the number of received requests for opinion (-2.06%) thereby affecting the total number of Legal Opinions rendered for the year. Similarly, the OGCC's Legal Opinions rendered maintained a disposition rate of 100%.

Some of the significant legal opinions which the OGCC rendered in 2023 are as follows:

- *Opinion No. 008, dated 11 January 2023 (PhilHealth)*

This refers to PhilHealth's request for clarification on OGCC Opinion No. 196, Series of 2021, on whether public hospitals under the Department of Health (DOH) may successfully invoke the doctrine of state immunity from suit from any possible violation under the National Health Insurance Act (NHIA) or Republic Act 7875, as amended by RAs 10606 and 11223.

- *Opinion No. 064, dated 14 April 2023 (PCSO)*

Request for legal advice on the propriety of giving due course to Charity Games of Chance Corporation's (CGCC) request to resume its operation



of Small-Town Lottery (STL) in Cagayan Province alluding to an Injunction Order of the Regional Trial Court, Mandaluyong City, in CGCC v. PCSO, docketed as Civil Case R-MND-18-02506-SC (which has been dismissed by the RTC in its 19 October 2000 Order).

- *Opinion No. 221, dated 14 April 2023 (MIAA)*

This refers to Manila International Airport Authority's (MIAA) request for the OGCC's concurrence with the MIAA Board of Directors, decision to grant a sixty-five percent (65%) discount on all Cebu Pacific Air's domestic take-off and landing fees based on Letter of Instruction (LOI) 498, Series of 1977.

C. OTHER LEGAL SERVICES

The other legal services which the OGCC rendered include the handling of mediation and arbitration cases among and on behalf of client GOCCs, filing of pleadings, attending hearings, and sending letters and advice to clients.

For 2023, the OGCC has filed 1,881 pleadings, attended a total of 764 hearings and sent a total of 2,316 letters/advice/communication, shown below:

No of Arbitration Cases handled under PD 242	20
No. Of Pleadings Submitted to Various Courts and Offices	1,881
No. Of Hearings Attended for Cases	764
Rendition Of Legal Advice (No. of Correspondence/Advice/Communication for Management, Legal Departments, Corporate Services and Services as In-House Counsel)	2,316

D. SPECIAL FUNCTIONS

In addition to its core functions and other related legal services, the OGCC has performed notable additional special functions for some of its client GOCCs for the past year.

For instance, the OGCC has been actively attending and giving relevant comments and suggestions during senate deliberations on GOCCs' bills and



other issues, as well as representing clients in the creation of charters and/or extension of corporate lives.

Moreover, as mandated by EO No. 292, s.1987 or the "Administrative Code of 1987" and as reiterated in RA No. 11954 or the Implementing Rules and Regulations of the Maharlika Investment Fund Act of 2023, the OGCC shall be the statutory counsel of the Maharlika Investment Corporation.

II. GENERAL ADMINISTRATIVE SERVICES

A. LEARNING AND DEVELOPMENT

The OGCC Learning and Development (L&D) Committee consistently prioritizes the professional advancement of individual employees and the overarching development of the organization. To this end, it continues to enhance collaborations with institutions from both the public and private sectors to offer training sessions and seminars to its workforce. Consequently, the L&D Committee has achieved the following milestones:

Excluding recently hired personnel and those detailed to the Department of Justice (DOJ), the legal staff have maintained an average attendance of 7 training sessions, exceeding this year's target by 234% (originally set at 3 trainings per individual).

Similarly, except for individuals engaged through contract of service or no longer affiliated with OGCC, the administrative staff have also surpassed the training objective (set at 2 trainings per person) with an average of 4 training sessions each, representing a 150% achievement rate per employee.

Furthermore, in Fiscal Year 2023, the L&D department expended 94.80% of its allocated budget, totaling PhP2,822,000.00 out of the PhP2,732,000.00 allocated, to support various in-house and public webinars, as well as other co-sponsored L&D activities. The remaining unutilized portion of the L&D budget, amounting to PhP150,000.00 (5.20%), was earmarked for the deferred Year End Assessment and Planning Workshop for FY2024, scheduled to be conducted from January 13 to 15, 2024.

In summary, 96.08% of the total Training Fund, equating to PhP3,672,000.00 out of the PhP3,882,000.00 allocated, was utilized for a range of activities including L&D initiatives, Corporate Planning, Team Building Activities, Year End Fellowship, and PRAISE endeavors.



B. GENDER AND DEVELOPMENT

In accordance with its mandate to advance women's empowerment and facilitate their comprehensive involvement in society, the OGCC Gender and Development Committee has undertaken numerous internal initiatives. Moreover, it has actively engaged in the significant observance of the 2023 Women's Month Celebration and the 18-day Campaign to End Violence Against Women, organized by the Philippine Commission on Women (PCW).

Furthermore, the OGCC has successfully initiated the inaugural Pride Month Celebration within the MWSS Compound, where its office is currently located.

C. ISO CERTIFICATION

On 9 November 2023, OGCC has once again secured its ISO 9001:2015 Certification as it passed the 2nd Surveillance Audit conducted by its external auditor, DQS Management Systems and Solutions.

D. FREEDOM OF INFORMATION

As of December 22, 2023, the OGCC proudly attained certification from the Freedom of Information - Program Management Office, affirming its full compliance with the prescribed set of FOI requirements. This accomplishment underscores OGCC's unwavering commitment to transparency and accountability, demonstrating its dedication to upholding the principles of open governance.

E. DIGITALIZATION

The drive for digitalization is crucial for institutionalizing President Ferdinand "Bongbong" Romualdez Marcos Jr.'s vision of a "*Bagong Pilipinas*". Digitalization plays a pivotal role in simplifying processes, enhancing services, and making information more accessible. OGCC's dedication to embracing digitalization standards highlights its determination to modernize governance and enhance public service delivery. Through the incorporation of digital tools (online registration, online law library, and document management information system) in various areas including Personnel, Library, and Records Sections, as well as legal review processes, OGCC has showcased notable efficiency, transparency, and advancement.



F. CLIENT SATISFACTION

For the year 2023, the OGCC conducted a Client Satisfaction Survey from 151 client GOCCs, covering the period January to December 2023.

The result of the Survey shows that in all the provided performance standards in the survey form (Responsiveness/Timeliness; Reliability/Quality; Outcome; Integrity; Communication; Assurance; Access and Facilities), the OGCC consistently garnered an average of EXCELLENT rating from client GOCCs (with the highest score being that for Integrity with description of *assurance that the service will be provided with honesty, integrity, justice, and fairness*).

G. OTHER PROJECTS

Throughout the year, the OGCC has been actively engaged in endeavors aimed at securing its own building, as exemplified by its persistent negotiations with Government Service Insurance System (GSIS) concerning the parcel of land in Mabini, Manila. Notably, the OGCC achieved a significant milestone by obtaining an opinion from the Department of Justice (DOJ), reaffirming the legitimacy of the Office's assertions regarding ownership of the property. This development underscores the OGCC's commitment and determination in pursuing its objectives and safeguarding its interests.

H. FUND RELEASES AND UTILIZATION

The table below shows the FY 2023 financial performance of the OGCC. The total releases for FY2023 are inclusive of (1) current/new general appropriation (2) automatic appropriations for RLIP and (3) continuing appropriations for unobligated FY 2022 allotment.



FY 2023 FINANCIAL PERFORMANCE

In Thousand Pesos ('000.00)

AUTHORIZATION/ ALLOTMENT CLASS	RELEASED ALLOTMENT	OBLIGATION	UNOBLIGATED BALANCES	O-BUR	DISBURSEMENT	UNPAID OBLIGATION	D-BUR
Current Appropriations							
PS	170,475	170,445	30		170,440	5	
MOOE	41,460	33,252	8,208		30,008	3,244	
CO	17,030	7,259	9,771		4,084	3,175	
	228,965	210,956	18,009	92%	204,532	6,424	97%
Current Appropriations (Other Releases)							
PS-MPBF	15,244	15,244	-		15,244	-	
PS-PGF	37,823	37,823	-		37,823	-	
	53,067	53,067	-	100%	53,067	-	100%
Automatic Appropriations							
PS-RLIP	10,829	10,829	-	100%	10,829	-	100%
Continuing Appropriations							
MOOE	824	820	4		820	-	
CO	429	405	24		405	-	
	1,253	1,225	28	98%	1,225	-	100%
GRAND TOTAL	294,114	276,077	18,037	94%	269,653	6,424	98%

In Fiscal Year 2023, the OGCC successfully utilized 94% of its total allocated funds, with 98% disbursed within the same period. Most of the unspent allocation for 2023 was attributed to pending renovations and expansions at the leased premises within the MWSS Building, along with the procurement delay of semi-expendable items (such as furniture, fixtures, office equipment, and ICT equipment) intended for the renovated space. The specifications for these procurement items were expected to be provided by the architectural and engineering (A&E) consultant, considering the OGCC's lack of technical expertise and the interdependence of these specifications with the renovation project. However, due to the project's complexity and the OGCC's limited expertise in drafting the A&E consultancy scope of work, the office encountered challenges in securing the required service. Fortunately, in the last quarter of the year, the OGCC successfully engaged the necessary consultant services.