Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

21 November 2018

SEC-OGC Opinion No. 18-19
Re: Annual Stockholders' Meeting and Election of Officers

CARIDAD P. ANDREWS, ET AL.
Provident Village, Brgy., Jesus dela Pena,
Marikina City

Attention: Caridad P. Andrews
Anthony R. Andrews
Jocelyn B. Perez-Cue
Benito F. Cue, Jr.
J. Ventura P. Cue
Fe Marietta P. Rey
Roland A. Rey
Michael Roland P. Rey
Elizabeth M. Perez
Matias M. Perez IV
Ruby Elizabeth M. Perez-Reyes
Isidro Martin F. Reyes, Jr.
Nicole Angela M. Perez
Paulo Alfonso M. Perez

Gentlemen:

This is in response to your letter dated 02 March 2017 regarding the prolonged "overstaying" of the Board of Trustees of the University of Cagayan Valley, Inc. ("Corporation") and requesting for our opinion on whether or not the pendency of an intra-corporate case bars the Corporation from conducting its Annual Stockholders" Meeting and Election of the Officers and Members of the Board of Directors.

In your letter you stated that you filed a case before the Regional Trial Court (RTC) in Tugegarao questioning the legality of the Annual Stockholders' meeting and election of the Board held last 2008. This case is still pending before the respective court. You further stated that,

> "Since 2008, no meeting has been called for the purpose of conducting the annual election of the Board... [As a result,] The Chairman as well as the Board of Trustees have held on to their positions on a "hold-over" capacity since 2008."

In a reply-letter dated 18 March 2014, the Chairman, Victor Perez, justified the inability to conduct the Stockholder's Meeting, in this light, "This has reference to your letter dated January 24, 2014 requesting for a Stockholder's Meeting. We regret to inform you that we cannot do so at this time without the Court ruling on the issues you raised in Civil Case No. 7186 entitled "Estela B. Perez et al. versus Victor V. Perez, et al."

You thus request for an opinion from the office on whether the pendency of an intra-corporate case bars the Corporation from conducting its Annual Stockholder's Meeting and Election of the Officers and Members of the Board of Directors.

In this regard, Section 50 of the Corporation Code provides,

> "Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, that written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws."

As a general rule, the schedule of the annual stockholders' meeting as fixed in the by-laws of the corporation, cannot be postponed or changed unless the by-law provisions are changed or the annual stockholders' meeting is suspended or postponed for some valid and meritorious reasons.[1] In addition, the postponement may only be for a reasonable time and stockholders must be properly notified of such postponement in accordance with the notification procedures provided in the by-laws.[2] The SEC Rules Governing the Filing of Information Sheet by Domestic Corporations further require that the Commission must be notified in writing of any postponement in the conduct of the annual meeting for any justifiable reason.[3]

The question that remains now is whether the pending intra-corporate dispute filed in the Regional Trial Court of Tugegarao may be considered as a valid and meritorious reason to postpone the annual stockholders' meeting and election of the Board of Trustees.

Unfortunately, the facts are insufficient to make a categorical opinion on whether the issues presented in the RTC of Tugegarao may validly bar the conduct of Annual Stockholders' meeting.

Be informed however that in previous cases, issues involving the proper identification of stockholders,[4] questions as to which stock and transfer book should be followed,[5] and change of financial period [6] were held to be valid reasons for postponement as these issues must necessarily be resolved before a valid election may take place.

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[1] SEC Opinion No. 05-13, October 10, 2005, addressed to Attys. Joseph J. Marigomen, and Ma. Winnie R. Lardizabal.

[2] SEC Opinion No. 99-01, April 29, 1999, addressed to Mr. Manuel S. Crudo, Jr.

[3] SEC Opinion No. 95-03, March 8, 1995, addressed to Mr. Ratan A. Vaswani.

[4] Philippine Overseas Telecommunications Corporation V. Victor Africa, G.R. No. 184622, July 3, 2013.

[5] Antonio Y. Pinzon v. Manuel S. C. Asensio III, SEC En Banc Case No. 10-10-221, Oct. 11, 2016.

[6] SEC Opinion dated 8 November 1985 addressed to Prime White Cement Corporation

In the POTC case[7], there was an issue as to the controlling stockholders of the mother company. Thus, the meeting of the mother company was ordered to be held prior to the meeting of the controlled company. In the Pinzon case[8], there were two stock and transfer books (STBs), one of which was first nullified before the calling of the meeting. In the opinion[9] addressed to Prime White Cement Corporation, the company was given time to adjust their financial statements to reflect the change in financial period before the holding of the annual meeting.

In the instant case, however, aside from stating that the intra-corporate dispute filed before the RTC questions the legality of the meeting and election of the Board held in 2008, no other information was presented. Therefore, it cannot be determined whether the issues raised before the courts must be resolved before the elections may be held.

It shall be understood, however that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances. [10] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[7] Philippine Overseas Telecommunications Corporation, *supra note 4*
[8] Antonio Y. Pinzon, *supra note 5*
[9] SEC Opinion dated 8 November 1985, *supra note 6*
[10] SEC Memorandum Circular 2003-15, No. 7