Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

03 November 2020

SEC-OGC Opinion No. 20-02
Re: Corporate Term under the Corporation Code.

OLIVA FIRME & ASSOCIATES LAW FIRM
Unit Nos. 28 & 30, 2nd Floor,
Facilities Centre Bldg.,
No. 548 Shaw Blvd., Mandaluyong City

Attention: ATTY. AHDA B. PAJO

Dear Atty. Pajo:

This refers to your letter dated 13 July 2020 (the "Letter-Request") requesting for an opinion on whether the corporate term of your client, the SOS CHILDREN'S VILLAGE CALBAYOG, INC. ("SOS-CV Calbayog"), in its Articles of Incorporation has already been deemed amended to the effect that SOS-CV Calbayog now has perpetual existence pursuant to Republic Act No. 11232 or the Revised Corporation Code of the Philippines ("RCC"), without performing any positive act.

In the Letter-Request, you stated that SOS-CV Calbayog was incorporated on 2 February 1970, when Batas Pambansa Blg. 68 or the Corporation Code was still in force which limited the corporate term of corporations to fifty (50) years[1], thus making its corporate term effective until 2 February2020 only. Hence, your query.

We answer in the affirmative.

Paragraph 2, Section 11 of the RCC provides:

> **"Corporations with certificates of incorporation issued prior to the effectivity of this Code, and which continue to exist, shall have perpetual existence, unless the corporation, upon a vote of its stockholders representing a majority of its outstanding capital stock, notifies the Commission that it elects to retain its specific corporate term pursuant to its articles of incorporation.** Provided, That any change in the corporate term under this section is without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code." *(Emphasis ours)*

Furthermore, Section 2(a) of SEC Memorandum Circular No. 22 Series of 2020[2] provides:

---

[1] "Section 11–A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term, as originally stated in the articles of incorporation, may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code: Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission."

[2] SEC Memorandum Circular No. 22, Series of 2020, *Guidelines on Corporate Term.*

"Section 2. Corporations Incorporated under B.P. No. 68 (Corporation Code of the Philippines) and Act No. 1459 (The Corporation Law)

a. **<u>The corporate term of a corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continue to exist, shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation.</u>** The corporation, subject to payment of filing fees, may amend Article Four to reflect its perpetual corporate term in its Articles of Incorporation, by a vote of majority of its Board of Directors or Trustees and by a vote of its stockholders representing a majority of its outstanding capital stock including the non-voting shares, or a majority of the members, in case of a non-stock corporation. Provided that, for all other provisions to be amended in one same amended articles of incorporation, the required vote should be vote of majority of its Board of Directors or Trustees and vote of its stockholders representing a two-thirds (2/3) of its outstanding capital stock or members, in case of a non-stock corporation." *(Emphasis ours)*

Based on the afore-quoted provisions, corporations existing prior to, and which continues to exist after the effectivity of the RCC, are *ipso jure* granted perpetual existence without any further action on their part. Given this, the Articles of Incorporation of all corporations who satisfies the requirements under Section 11 of the RCC and MC 22 Series of 2020 are deemed amended to the effect that their corporate term is now perpetual. A positive act on the part of corporations is only required if they intend to limit their corporate term to a certain period. This Commission has already issued previous Opinions[3] addressing the same query which you have posed in your Letter-Request, and which in the like manner, is applicable in your case.

It shall be understood that the foregoing opinion is rendered and 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.[4] 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.

Respectfully yours,

ROMUALD C. PADILLA
General Counsel

---

[3]SEC-OGC Opinion No. 19-16 dated 15 April 2019 addressed to Paner Hosaka and Ypil and SEC-OGC Opinion No. 19-47 dated 05 September 2019 addressed to Du-Baladad and Associates.
[4]SEC Memorandum Circular No. 15, Series of 2003, No.7