Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

02 December 2011

SEC-OGC Opinion No. 11-48
Re-election of the Members of the Board of Directors

USEC MARIO L. RELAMPAGOS
President
Philippine Association for Government Budget Administration (PAGBA), Inc.
c/o BIR, NOB, Agham Road, Diliman
Quezon City

USEC Relampagos:

This refers to your letter dated 04 October 2011, and endorsed to this Office on 17 October 2011 by the Company Registration and Monitoring Department of the Commission requesting opinion on whether the present complement of the Board of Directors of Philippine Association for Government Budget Administration (PAGBA), Inc. (**"PAGBA"**) may still be qualified to run for re-election in the light of the provision in their by-laws allowing for the re-election of the officers and directors but not for more than two successive terms.

As disclosed in your letter, the following are the relevant facts:

The present members of the Board of Directors of PAGBA were elected to their positions in 2000. Since then, and up to the present, they have continued to discharge their respective functions and responsibilities without re-election, in the absence of their successors having been elected or qualified pursuant to Section 1, Article IX of their By-Laws, which provides that:

> "**Section 1**. No director or officer shall relinquish his/her position ***until duly replaced or until his/her successor shall have been duly qualified***." (Emphasis supplied)

Because of the difficulty of mustering thirty (30) nominees, the required number of nominations set in their by-laws, PAGBA proposed to amend such requirement; however, the same was disapproved by the

Commission because of certain procedural defects in the manner said amendment was adopted.

PAGBA is now asking this Office to render an opinion as to whether the present complement of the Board of Directors may still be qualified to run for re-election in the light of Section 2, Article VI of its By-Laws, which provides:

> "**Section 2**. The Officers and Directors of the Association may be ***re-elected*** for not more than two successive terms." (Emphasis supplied)

Under the Corporation Code, while a director's **term** is fixed, the **tenure** of a director survives until a successor is duly elected and qualified. There is a difference between the term of a director and his tenure. The former is fixed while the latter extends until his successor is duly elected and qualified.

Further, in the case of *Valle Verde Country Club, Inc., et al. vs. Victor Africa,*[1] the Supreme Court had an occasion to rule that "***the holdover period is not part of the term of office of a member of the board of directors,***" thus:

> "The word "term" has acquired a definite meaning in jurisprudence. In several cases, we have defined "***term***" as the **time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another**. The term of office is not affected by the holdover. The term is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.
>
> Term is distinguished from tenure in that an officer's "***tenure***" represents the **term during which the incumbent actually holds office**. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.
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> Based on the above discussion, when Section 23 of the Corporation Code declares that "***the board of directors . . . shall hold office for one (1) year until their successors are elected and qualified***", we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office. **The holdover period** — *that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification* — **is not part of the director's original term of office, nor is it a new term**; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has

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[1] G.R. No. 151969, 04 September 2009.

expired, and the incumbent is holding the succeeding term."[2] (Emphasis supplied)

Hence, the hold-over period, or that time from the lapse of their term and until their respective successors' election and qualification, is not a new term.

Meanwhile, Section 2 of the Article VI of the By-Laws of PAGBA provides for the ***re-election*** of its officers and directors **for not more than two (2) successive terms**.

Based upon the foregoing, when the By-Laws of the PAGBA expressly provide for the *re-election* of its officers and directors for *not more than two (2) successive terms*, the same officers and directors may still be qualified to run for re-election provided that the *term* which the incumbents currently hold is not by virtue of a second consecutive re-election.

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 issues raised therein and 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.[3] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[2] *Ibid.* (citations omitted)
[3] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.