7 October 2019

SEC-OGC Opinion No. 19-48
Re: Corporate Term of Educational Institutions

LAW OFFICES OF MACARAIG & ASSOCIATES
Door 5, Pavilion 3 Panganiban Drive, Naga City
4400 Philippines

Attention: ATTY. ALLAN REIZ C. MACARAIG

Dear Atty. Macaraig:

This refers to your letter dated 5 July 2018 requesting for the Commission's opinion on the corporate existence of your client, University of Northeastern Philippines (UNEP).

In your letter, you stated that UNEP, formerly known as Mabini Memorial Colleges, Inc. was incorporated in 1968 and that paragraph 4 of its Articles of Incorporation (AOI) provides that UNEP's term of existence is fifty (50) years from the date of incorporation or until 2018. Further, you averred that this Commission has already ruled in SEC-OGC Opinion Nos. 13-01 and 13-05 that educational institutions with perpetual corporate terms and incorporated prior to the effectivity of the Corporation Code are deemed to exist for fifty (50) years reckoned from the date of the effectivity of the Corporation Code on 1 May 1980. Finally, you stated that by reason of Section 148 of the Corporation Code, which took effect on 1 May 1980, the corporate life of UNEP started anew on said date and that it shall end fifty (50) years therefrom or in the year 2030.

In a previous Opinion, the Commission opined that "[u]nder the Corporation Law[1], no maximum corporate term of existence was prescribed for educational institutions, thus in cases where the AOI does not specify a term, the corporate term of such institution is deemed perpetual."[2]

Subsequently, Batas Pambansa Bilang 68 (BP 68), otherwise known as the Corporation Code, took effect on 1 May 1980. Section 11 of said law requires the corporate term of existing and new corporations to be limited to fifty (50) years from incorporation unless sooner dissolved or unless said period is extended.

As to corporations existing prior to the effectivity of BP 68, they were required to comply with the new requirements of the latter within two (2) years or until 1 May 1982, pursuant to Section 148 of BP 68, which reads:

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[1] Act No. 1459 and the precursor of the Corporation Code.
[2] SEC-OGC Opinion No. 16-24 dated 13 October 2016 and addressed to Ma. Lerma M. Reyes.

> "Section 148. Applicability to existing corporations. – All corporations lawfully existing and doing business in the Philippines on the date of the effectivity of this Code and heretofore authorized, licensed or registered by the Securities and Exchange Commission, shall be deemed to have been authorized, licensed or registered under the provisions of this Code, subject to the terms and conditions of its license, and shall be governed by the provisions hereof: Provided, That if any such corporation is affected by the new requirements of this Code, said corporation shall, unless otherwise herein provided, be given a period of not more than two (2) years from the effectivity of this Code within which to comply with the same. (n)

It has been opined that in case an affected educational corporation fails to amend its Articles of Incorporation (AOI) and to comply with the applicable provisions of BP 68 on or before 1 May 1982, the expiry date of the two (2) year period mentioned in Section 148, the respective provisions will be considered written into the AOI of the corporation as of the date of the effectivity of BP 68 on 1 May 1980.[3] Hence, based on said pronouncement, the fifty (50) year period will be counted from 1 May 1980.[4]

Basing the 50-year period from the date of registration would adversely affect the operations of pre-war schools established for more than fifty (50) years from the date of effectivity of the Corporation Code as it would result to its dissolution. This situation, therefore, would be detrimental to its students.[5]

Thus, to avoid unintended consequences and in order to be consistent with the position of the Commission on the application of Section 148 of BP 68, it would be appropriate to reckon the 50-year period from the date of effectivity of the Corporation Code. This interpretation promotes public interest, as it would enable educational corporations registered under the Corporation Law to continue serving the needs of the locality where the schools are located. This is consistent with the intent and purpose of the Legislature when it enacted the Corporation Code.[6]

However, these previous Opinions of the Commission shall only apply to educational institutions with perpetual corporate terms prior to the effectivity of BP 68.

It has been held that if the educational institution, though allowed to have a perpetual term under the Corporation Law, amended its AOI prior to the effectivity of BP 68, specifically limiting its corporate term after its incorporation, the fixed or definite term should be followed.[7] The reason is that the corporation waived its right or option to have a perpetual term by adopting a specific one.

Here, considering that UNEP's corporate term was expressly limited to fifty (50) years from 1968 as per your representation unlike those which were the subject of this

[3] SEC-OGC Opinion No. 18-01 dated 24 January 2018 and addressed to Policarpio & Acorda Law Office.
[4] SEC-OGC Opinion No. 13-01 dated 21 March 2013 and addressed to Fernandez & Associates.
[5] SEC-OGC Opinion No. 13-05 dated 24 April 2013 and addressed to J. Neri and Associates.
[6] SEC Opinion dated 25 September 1990 and addressed to Atty. Sabino Padilla, Jr.
[7] SEC-OGC Opinion No. 18-12 dated 6 August 2018 and addressed to Mr. Vicente R. Paguila.

Commission's previous Opinions, the fifty (50) year period shall be reckoned from 1968 instead of from 1 May 1980.

Thus, if UNEP failed to extend its term on or before 2018, it is deemed dissolved.

Please be informed, however, that Republic Act No. 11232 or the Revised Corporation Code (RCC) took effect last 23 February 2019. In Section 11 of the RCC, "a corporation whose term has expired, may, at any time, apply for a revival of its corporate existence xxx".

It shall be understood 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.[8] 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.

ROMUALD C. PADILLA
Officer-in-Charge

[8] SEC Memorandum Circular 2003-15, No.7