Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

07 May 2019

SEC-OGC Opinion No. 19-17
Re: Board of Trustees

MR. LUCIO LIM
PHILCULTAROS, Inc.
c/o Mr. Lorentti T. Velasco
113 Doña Segunda Building,
Kamuning Road, Quezon City

Dear Mr. Lim

This refers to your letter dated 29 January 2016 requesting for an opinion on whether or not the eleven (11) members, now acting as members of the Board of Trustees (BOT) of PHILCULTAROS, Inc., are considered as the duly constituted officers of the corporation.

You disclosed in your letter that PHILCULTAROS, Inc. is a non-stock and non-profit association registered with the Commission on 18 February 2015. You also stated that prior to its registration, it was known as Philippine Cultural Technical Association of Returned Overseas Scholars (Old Philcultaros) which was likewise registered with the Commission.

Further, you stated that after the new registration, the by-laws of PHILCULTAROS, Inc. was amended, which amendments became effective upon its approval/ratification by the general membership on 21 November 2015. Among the amendments introduced in the new by-laws is the change in the term of office of the members of the BOT from one (1) year to two (2) years. However, according to you, no election of officers was held under the new by-laws or the amended one. The last election was conducted on 27 June 2014, under the by-laws of the Old Philcultaros. Five (5) of the elected officers during the said election are the ones sitting now as members of the BOT of PHILCULTAROS, Inc. and another six (6) were appointed by the said five members to sit with them, and act as BOT.

In view of the foregoing premises, you seek enlightenment on the following issues:

1. May the eleven (11) aforementioned members (now acting as BOT) be considered as duly constituted officers of PHILCULTAROS, Inc.?

2. If the answer is in the affirmative, what is the duration of their term of office; when did their term commence and when will it end?

3. If the answer is in the negative, should an election of officers of PHILCULTAROS, Inc. be immediately conducted?

At the outset, it bears stressing that the Commission, as a matter of policy, refrains from rendering categorical opinions on issues which may potentially be litigated in the future in an intra-corporate and/or civil case such as matters involving the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest[1], and on matters which would necessarily require a review and interpretation of contracts or an opinion on the validity of contracts since the interpretation of contracts is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.[2]

Regrettably, the circumstances of your query involve an intra-corporate controversy[3], which affects the substantive and contractual rights of the parties concerned. Thus, the Commission shall refrain from <u>categorically</u> rendering an opinion on the issues presented.

However, <u>for purposes of information only</u>, the following may be imparted.

Based on the Commission's records, PHILCULTAROS, Inc. was indeed registered with the Commission on 18 February 2015. On the other hand, "Philippine Cultural Technical Association of Returned Overseas Scholar" or the Old Philcultaros was registered with the Commission on 9 May 1990. It is noteworthy that both entities are still registered, are distinct from each other and have separate by-laws.

As a SEC-registered entity, PHILCULTAROS, Inc. complied with Section 14, Paragraph 7, of the Corporation Code, which provides:

> "**Sec. 14. *Contents of the articles of incorporation.*** – All corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by

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[1] SEC Memorandum No. 15 series of 2003 as cited in SEC-OGC Opinion No. 15-09 dated 27 August 2015.

[2] Ibid.

[3] Pursuant to Section 5.2 of R.A. No. 8799, otherwise known as the Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the Regional Trial Court. An intra-corporate controversy is one which pertains to any of the following relationships; (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. (Medical Plaza Makati Condominium Corporation vs. Robert H. Cullen; G.R. No. 181416; 11 November 2013).

> all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
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> xxx
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> 7. The names, nationalities and residences of persons **who shall act as directors or trustees until the first regular directors or trustees are duly elected and qualified in accordance with this Code**; (Emphasis ours)
>
> xxx

Otherwise stated, the Articles of Incorporation of every corporation is required to state the names and nationalities of the persons who shall act as directors or trustees upon incorporation until the first regular directors and trustees are duly elected.

Based on your representation, the trustees indicated in the Articles of Incorporation of PHILCULTAROS, Inc. are the 5 trustees elected under the by-laws of the Old Philcultaros and their 6 appointees. These 11 persons are to act as trustees of PHILCULTAROS, Inc. until the election of the first regular trustees on the election day stated in its by-laws.

Thus, after incorporation, the corporation should conduct its meeting and election to elect its first regular directors or trustees, in accordance with its by-laws.

In this connection, Section 1, Article VI of PHILCULTAROS, Inc.'s, by-laws provides:

> "Section 1. Meetings – The annual or regular meetings of the members shall be held in **last Monday of March of each year**, if legal holiday, then on the day following. Trustees, as its own instance or upon petition of 1/3 of the general membership." (sic)

Further, Section 4, Article I of PHILCULTAROS, Inc.'s old by-laws provides:

> "Section 4. Term – the members of the Board of Trustees **shall serve for a period of one (1) year and until their successors are duly elected and qualified.**" (Emphasis ours)

However, based on your representation, PHILCULTAROS, Inc. has had no election since its incorporation on 18 February 2015. Should PHILCULTAROS, Inc. conduct its first election since its incorporation, the provisions of its by-laws must be followed.

In this connection, the term of office of trustees should be governed by the by-laws which are then prevailing at the time of the election. The Commission, in its previous Opinion[4], imparted that:

> "Under Section 48 of the Corporation Code, amendments to the by-laws shall only be effective upon the issuance by the Securities and Exchange Commission of a certificate that the same are not inconsistent with the provisions thereof. Likewise, the Commission, in several occasions, has opined that By-Laws shall be made to apply prospectively and not retroactively. Accordingly, the amended term of office cannot be applied to the incumbent members of the Board who are elected under the old By-Law provision."

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[4] SEC Opinion dated 17 November 1994, addressed to Mr. Carlos G. Beltran