Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

**OFFICE OF THE GENERAL COUNSEL**

31 March 2026

**SEC-OGC Opinion No. 26-08**
**Re: Loan Program of a Non-Stock, Non-Profit Alumni Association**

**ATTY. KARLA GRACE J. DELES-GELI**
*Legal Counsel*
NTMA Alumni Societas, Inc.
karla.deles@tdgworld.com

**Dear Atty. Deles-Geli:**

This refers to your Letter[1] requesting for an opinion from the Commission regarding the proposed Loan Program of NTMA Alumni Societas, Inc. ("NAS").

As stated in your Letter, the relevant facts are as follows:

1. NAS is a non-stock, non-profit alumni association of graduates from the NYK-Transnational Diversified Group ("TDG") Maritime Academy ("NTMA").

   Under NAS' Articles of Incorporation ("AOI"), the purpose for its incorporation is **"to generate individual and collective support to continuously enrich the lives of the NTMA graduates/Alumni and help advance the interest of NTMA and its immediate community, *i.e., its cadets, faculty members and non-teaching personnel.*"**

2. Pursuant to its mandate of providing support to its alumni, NAS' Board of Trustees wants to explore the possibility of providing loan to its members to aid them in obtaining their Management License by taking the Management Level Course ("MLC") as maritime officers/seafarers which is a mandatory requirement by the government through the Maritime Industry Authority.

3. The said loan program is proposed to be called the MLC Loan Program ("Loan Program"). It aims to grant loan to the members to help them pay for their MLC training. Based on the review of the progression of the promotion of NTMA graduates, a total of 194 of them from Classes 2011-2015 have not been able to attain the management level positions onboard ships. This is below the target number of officers on board NYK Line-owned ships, which is the oldest shipping company in Japan.

4. In the said Loan Program, NAS will be requiring the following qualifications for its availment: (a) active contribution to the association with no more than two (2) years of unpaid annual fees; and (b) currently sailing with the NYK Line through its Philippine manning agency, NYK-Fil Ship Management, Inc. ("NYK-FIL").

[1] Dated 30 October 2024. Received by this Office *via* email on even date.

5. The proposed repayment term under the Loan Program is through salary deduction within one (1) to a maximum of four (4) months from embarkation onboard the ship.

6. The member-borrower is likewise bound under the Loan Agreement to render such number of shipboard contracts with NYK-FIL. The types of loan that may be availed and their binding effects are as follows:

   6.1. **Full MLC Loan.** The officer must render either of the following shipboard services with NYK-FIL after completing the MLC training:

      6.1.1. Two (2) contracts as Junior Officer; and
      6.1.2. One (1) contract as Management Officer.

   6.2. **MLC Function Loan.**

      6.2.1. The officer must render one (1) contract with NYK-FIL after completion of one (1) training.

      6.2.2. The officer must render either of the following shipboard services with NYK-FIL after completing all functions of the MLC training:

         6.2.2.1. Two (2) contracts as Junior Officer; and
         6.2.2.2. One (1) contract as Management Officer.

7. The Loan Agreement also indicates that "failure to pay shall be charged to the Borrower's total contribution amount, to be reflected in the membership tier system."

Your queries are:

1. Whether NAS may provide loan to its members?

   Considering that among the common features of a non-stock corporation is that "when incidental to the objects and purpose of the corporation and without the end of making profits to be distributed to the members, it may engage in certain economic activities stated in its articles of incorporation."[2]

2. By extending said loan to its members, can NAS validly charge minimal/reasonable interest on the loan and/or administrative fee for the processing of the loan application with the income to be used solely for the furtherance its purpose and without distributing said profits to its members?

## *I. Definition and Purposes of a Non-stock, Non-Profit Corporation; and Powers of a Corporation.*

Section 86 and 87 of the Revised Corporation Code ("RCC") provide for the definition and purposes of a non-stock, non-profit corporation, *viz:*

> Section 86. *Definition.* – For purposes of this Code and subject to its provisions on dissolution, **a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers:** *Provided*, **<u>That any profit which a nonstock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes</u> for which the corporation was organized,** subject to the provisions of this Title.
>
> x x x x x x x x x[3]
>
> Section 87. *Purposes.* – Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, **social, civic services,** or similar purposes, like trade,

[2] SEC Opinion No. 29-06 dated 07 June 2006, addressed to Ms. Rayla Melchor Santos.
[3] Emphasis and underscoring supplied.

industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations.[4]

In connection to the foregoing, Section 13 and 44 of the RCC read:

> Section 13. *Contents of the Articles of Incorporation.* x x x
>
> (b) **The specific purpose or purposes for which the corporation is being formed.** Where a corporation has more than one stated purpose, the articles of incorporation shall indicate the primary purpose and the secondary purpose or purposes: *Provided,* **That a nonstock corporation may not include a purpose which would change or contradict its nature as such.**
>
> x x x x x x x x x[5]
>
> Section 44. *Ultra Vires* Acts of Corporations. – No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.

It is well-settled that **a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express power.** A corporation has both express and implied or incidental powers. **Express powers** are those which are enumerated in Section 35 of the RCC, and those which are sanctioned by the State in the corporation's AOI. **Implied or incidental powers**, on the other hand, are the corporation's "powers, attributes and properties which are incidental to its existence," which may be "essential or necessary to carry out its purpose or purposes as stated in its AOI."[6]

**A corporation may exercise its powers only within those definitions.** Corporate acts that are outside those express definitions under the law or AOI or those "committed outside the object for which a corporation is created" are *ultra vires.*[7]

***II. Power of a Non-stock, Non-profit Corporation to Venture on Profitable Business Activities.***

Under the aforequoted provisions of the RCC, non-stock, non-profit corporations, **as a general rule, are not empowered to venture on profitable business activities. By way of exception,** the corporation may, **<u>as incident to its purpose(s)</u>, engage in business activities which are <u>reasonably necessary</u> to carry out the purpose(s) for which the corporation was organized.** Any such power which is reasonably necessary to enable a corporation to carry out express powers granted and the purposes of its creation is to be deemed implied or incidental purpose. However, activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of the corporation. Thus, while non-stock corporations are not empowered to venture on profitable business activities, **they may, as incident to their purposes, engage in such business activities that are reasonably necessary or essential to carry out the purposes for which they were organized, provided that any profit that may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.**[8]

The law clearly allows non-stock corporations to raise funds **so long as it is incidental to the company's operations, and that said funds shall be used for the furtherance of the purpose for which it was established.** The fact that a non-profit corporation earns a profit as a legal entity, as distinguished from profit, gain or income to the incorporators or members, does not make it a profit-making corporation where such profit or income is used for the purposes set forth in the AOI and is not distributed to its incorporators, members or officers, since mere intangible or pecuniary benefits to the members do not change the nature of the corporation.[9]

---

[4] Emphasis supplied.
[5] Emphasis supplied.
[6] SEC-OGC Opinion No. 19-22 dated 14 June 2019, addressed to Juan Miguel Macapagal Arroyo.
[7] *Magallanes Watercraft Association, Inc. v. Margarito C. Auguis and Dioscoro C. Basnig,* G.R. No. 211485, 30 May 2016.
[8] SEC-OGC Opinion No. 24-21 dated 16 August 2024, addressed to Atty. Geneses R. Abot. Citations omitted.
[9] Ibid. Citations omitted.

## *III. Interpretation of a Corporation's Purpose Clause; Situations where Stretching the Purpose is Legally Allowed versus Prohibited.*

In determining whether a non-stock corporation can engage in business activities for profit, much would depend on the purpose clause provision in its AOI. **If the business activity is <u>not incidental, necessary or essential</u> to carry out the <u>express objectives</u> of the corporation as appearing in its AOI, the same <u>cannot be undertaken by a non-stock corporation</u>.**[10] **Many times the purpose clause can be reasonably 'stretched' as to impliedly cover these new and unexpected situations. But <u>in those cases where it cannot, a proper amendment thereof would be necessary</u>.**[11]

By way of illustration, in an Opinion,[12] the Commission permitted the online selling of Ayala Foundation, Inc. ("AFI"), a non-stock, non-profit corporation, under its existing Amended AOI. The Commission, in permitting the said online selling, ratiocinated that: (a) it was reasonably necessary and **incidental** to AFI's primary purpose of preserving, enhancing, and encouraging Philippine Art and Culture; and (b) a corporation **authorized and/or registered as engaging in selling** in general may do so online, because **online selling is just a mode or means of selling—as long as a corporation is authorized to engage in selling in furtherance of its purpose, it may do so <u>by any means or mode</u> available since it is <u>permissible to stretch</u> AFI's purpose clause to include the same.** Thus:

> Though non-stock, non-profit corporations, as a general rule, are not authorized to pursue commercial business activities, they may do so **when such income generating activities are <u>essential, incidental or reasonably necessary</u>** to enable the corporation to carry out powers expressly granted and for the furtherance of the purpose(s) for which the corporation was established, and provided that income realized or derived therefrom shall not be distributable to members or officers but are used for the furtherance of the purpose(s) for which the corporation was organized. However, activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of the corporation.
>
> Article II of AFI's AAOI provides in part, to wit:
>
> SECOND. — That the purposes for which this Corporation is formed are:
>
> xxx xxx xxx
>
> 7. **To preserve and enhance Philippine Art and Culture by, among other things, establishing and maintaining museums and libraries, supporting ethnic artisans and craftsmen, and undertaking related activities that will encourage Filipinos, especially our youth, to appreciate their heritage;**
>
> xxx xxx xxx
>
> 14. **Generally, to do all such things, transact such business, exercise such powers and authority as may be directly or indirectly <u>necessary, suitable, or proper for the accomplishment</u> of any of the purpose or the attainment of any or more of the object herein enumerated or which shall appear at anytime conducive to, or expedient for the Foundation;** . . . x x x
>
> Thus, AFI's online selling of products that feature Philippine Culture and the works of Filipino artists to generate income to be used in the furtherance of its purposes under its AAOI **can be said to be reasonably necessary and incidental to its primary purpose of preserving, enhancing and encouraging Philippine Art and Culture.** Hence, AFI can engage in the same.
>
> **Further, a corporation authorized and/or registered as engaging in selling in general may do so online, because online selling is just a mode or means of selling. Thus, as long as a corporation is authorized to engage in selling in furtherance of its purpose, it may do so by any means or mode available.** The Commission has previously opined, to wit:
>
> > "It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in such business (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p. 54). As a matter of fact, it is even legal to "stretch" the meaning of the purpose clause to cover new and unexpected situations.
> >
> > There will always be instances when doubts may arise as to whether an act may be reasonably implied from the purposes of the corporation. These doubts will sometime be due to poor draftsmanship or lack of foresight on the part of the original incorporators or their legal counsel or, as is oftentimes the case, situations or circumstances may come up which could not have been foreseen at the time of the incorporation. **<u>Many times the purpose clause can be reasonably 'stretched' as to impliedly cover these new and unexpected situations.</u>**

---

[10] Supra Note 8.
[11] SEC-OGC Opinion No. 19-39 dated 18 September 2019, addressed to Mr. Romualdo I. Katigbak.
[12] Ibid.

> **But in those cases where it cannot, a proper amendment thereof would be necessary** (Campos and Lopez Campos, Notes and Selected Cases on Corporation Law, p. 247)."[13]

**In contrast,** the Commission opined[14] that the powers expressly or impliedly conferred upon Hydro-Pipes (Phils.) Inc., the requestor therein, cannot be "stretched" to cover the contemplated contract of guaranty or suretyship without amending its AOI, *viz:*

> Your query is whether or not the proposed amendment required by Philguarantee is necessary, because you believe that it "is inherent in the power of the Corporation to enter into contract, especially if authorized by the Board and its stockholders at a meeting called for the purpose . . ."
>
> Relative thereto, please be informed that **nowhere in the aforementioned corporation's articles of incorporation do we find a provision authorizing the same to enter into a contract of guaranty or suretyship with any individual, corporation or entity.**
>
> It is settled that it is only in the business/es, for which it was lawfully organized and which is stated in the articles of incorporation, that a corporation should engage in. But if the business is necessary for the accomplishment of the purpose of the corporation or incident to it, the corporation may also engage in such business. (2 Oben and Oben, Comments on the Commercial Law of the Philippines, p. 54). **As a matter of fact, it is even legal to "stretch" the meaning of the purpose clause to cover new and unexpected situations.**
>
> > **xxx Many times the purpose clause can be reasonably 'stretched' as to impliedly cover these new and unexpected situations.** **But in those cases where it cannot, a proper amendment thereof would be necessary.** (Campos and Lopez Campos, Notes and Selected Cases on Corporation Law, p. 247).
>
> In the light of the foregoing and **the fact that the powers expressly or impliedly conferred upon Hydro-Pipes (Phils.) Inc. cannot be "stretched" to cover the contemplated contract of guaranty or suretyship, the corporation may not enter into such contract without amending the articles of incorporation.**[15]

To illustrate **both** the permissibility and disallowance of engaging in certain activities relative to a corporation's purpose, in another Opinion,[16] the Commission permitted OMF Literature, Inc. ("OMF"), a non-stock, non-profit religious organization, to sell copies of the Bible and other religious literature as the said activity can be said to be ***reasonably necessary and incidental*** to its purpose of propagating the word of Jesus Christ. However, ***as to franchising,*** the Commission disallowed OMF to engage in the same considering that it is ***no longer reasonably necessary or essential to the propagation of Christian values and teachings.*** Thus:

> Anent your first query, **OMF can sell copies of the Bible and other religious literature as the said activity can be said to be reasonably necessary and incidental to its purpose of propagating the word of Jesus Christ.** The Commission had already opined that the act of a corporation selling merchandise as an incident to its primary purpose does not constitute retail trade. However, the said opinion referred to a stock corporation, and not to a non-stock corporation (such as OMF) to which the limitations imposed by the afore-quoted provisions of the Code should apply. In short, while OMF may sell copies of the Bible and other religious literature, (1) the requirements of Section 87 of the Code as to the use of profits realized must be observed, and (2) the selling must be reasonable so as not to amount to a contradiction or negation of OMF's nature as a religious organization.
>
> **The same cannot be said, however, of franchising. Franchising is an arrangement where one party (the franchiser) grants another party (the franchisee) the right to use its trademark or tradename as well as certain business systems and processes, to produce and market a good or service according to certain specifications, with the latter paying a franchise fee plus a percentage of sales revenue as royalty.** Because of the franchise, the franchisee gains: (1) immediate name recognition, (2) tried and tested products, (3) standard building design and decor, (4) detailed techniques in running and promoting the business, (5) training of employees, and (6) ongoing help in promoting and upgrading of the products. **Hence, franchising takes stock of one's business superiority and is a tool for business expansion and/or advancement. In essence, it is primarily a business function. Thus, while it may be convenient or useful, it is no longer reasonably necessary or essential to the propagation of Christian values and teachings, having in view the nature and object of OMF as a religious corporation.**[17]

### *IV. Discussion.*

**a. The granting of loans is not incidental, necessary, or essential to carry out the express objectives of NAS as appearing in**

---

[13] Emphasis and underscoring supplied.
[14] SEC Opinion dated 24 March 1982, addressed to Mr. Amado J. Lansang, Jr.
[15] Emphasis and underscoring supplied.
[16] SEC-OGC Opinion No. 12-11 dated 09 March 2011, addressed to Velicaria Egenias Law Offices.
[17] Emphasis and underscoring supplied.

**its AOI; and NAS' Purpose Clause cannot be stretched to include lending.**

To recall, NAS is organized **"to generate individual and collective support to continuously enrich the lives of the NTMA graduates/Alumni and help advance the interest of NTMA and its immediate community, *i.e., its cadets, faculty members and non-teaching personnel.*"**

The foregoing means that in order for NAS to enrich the lives of NTMA graduates/Alumni and help advance the interest of NTMA and its immediate community, **support can be mobilized and generated in two ways, *i.e., Individual and Collective Support*,** as envisioned and supported by the declaration of its Nature and Objectives under Article III of its By-Laws:

1. Extending appropriate assistance whenever deemed necessary.

2. NAS' organized efforts to provide opportunities to respond to societal issues by organizing fund raising activities, campaigns, movements, etc.

3. Fostering camaraderie and promoting fellowship by maintaining an updated online directory, holding annual social gatherings, continuous monitoring of the shipboard career of each alumnus, etc.

4. Instilling amongst the NTMA graduates/Alumni the responsibility and their primordial duty to uphold the name of NYK, TDG, NYK-FIL, and NTMA by encouraging them to constantly strive for excellence and achieve success in their undertakings.

5. Encouraging the NTMA graduates/Alumni to participate in maritime-related socio-civic activities which will benefit the NTMA community.

To state again, the issue at hand is whether lending to NAS' members is incidental to the aforesaid purpose.

By a contract of simple loan, one of the parties delivers to another money upon the condition that the same amount of the same kind and quality shall be paid. ***A person who receives a loan of money acquires ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.***[18]

Consequently, extending a loan: (a) involves capital allocation by the corporation; (b) requires credit risk assessment and analysis; (c) **generally implies financial return through interest fee collections, administrative charges, and/or other impositions;** and (d) necessitates collection and enforcement mechanisms. In essence, lending, as a means of extending credit facility, **primarily connotes a business activity for profit.** This is bolstered by the fact that it is governed by **specific and distinct regulatory laws,** *e.g., Republic Act ("R.A") No. 9474 or the Lending Company Regulation Act of 2007 ("LCRA"), as amended,*[19] *or R.A. No. 8556 or the "Financing Company Act of 1998", as amended.*[20]

On certain instances, however, non-stock, non-profit corporations may engage in lending activities to promote the welfare of its members, provided these are carried out **under well-defined terms and conditions and are governed by separate and distinct laws on the matter,** *e.g., R.A. No. 8367 or the "Revised Non-Stock Savings and Loan Association Act of 1997" or R.A. No. 4917,*[21] and are expressly or impliedly included in its AOI.

Thus, **in the event that a non-stock, non-profit corporation's lending activities are no longer incidental to its operations, it becomes a business for profit, and as such, contradicts its nature as a non-stock, non-profit corporation.**

---

[18] *Santiago v. Spouses Garcia,* G.R. No. 228356, 09 March 2020. Emphasis and italics supplied.
[19] As amended by R.A. No. 10881, Amendments to Investment Restrictions in Specific Laws on Adjustment, Lending, and Financing Companies, and Investment Houses, 17 July 2016.
[20] An Act Amending R.A. No. 5980, as amended, otherwise known as the "Financing Company Act."
[21] An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax whatsoever.

As applied, NAS' AOI, however, does not expressly or unequivocally allow granting of loans. **Neither can NAS' purpose clause be reasonably stretched to impliedly or incidentally allow the same.** This is because while extending loans may be convenient or useful, **it is no longer reasonably necessary nor essential to further NAS' purpose, having in view its nature and object as a social and civic corporation, as will be discussed hereunder.**

**b. The granting of loans cannot be interpreted as falling within, being analogous to, or bearing resemblance to, the modes mentioned in Article III of NAS' By-Laws.**

The modes mentioned in Article III of NAS' By-Laws emphasize **professional responsibility** and **community involvement** among the NTMA alumni. They highlight and instill initiatives that promote professional advancement by encouraging the graduates to strive for excellence while upholding the reputation of NYK, TDG, NYK-FIL, and NTMA. Alongside this, solidarity and **fellowship** are fostered through organized activities and gatherings, career monitoring, and maintaining an alumni network. **Collectively, the enumeration is geared towards merely facilitative and supportive means** of community building, advocacy, and professional advancement, **rather than active and direct commercial or financial transactions, such as lending. Accordingly, NAS' modes and undertakings should remain as non-commercial and facilitative only in nature.**

Therefore, under any reasonable interpretation and construction, **lending cannot be deemed as an implied mechanism by which NAS can generate support, for it cannot be interpreted as falling within, being analogous to, or bearing resemblance to, the modes** mentioned in Article III of its By-Laws. Further, this strict interpretation is in accordance with the fact that **lending** is primarily **a regulated financial activity that is subject to specific governing laws, and as such, any exception therefrom must be strictly construed.**

**c. The imposition of the Service Obligation is not in accordance with NAS' By-Laws.**

Moreover, this Office notes that in the MLC Loan Application Form and Loan Agreement, the member-borrower is **under obligation** to complete the corresponding shipboard contracts stated in Item No. 6 hereof. Such terms and conditions, however, contradict the modes mentioned in Article III of NAS' By-Laws. Binding the member-borrower into an obligation to enter into contracts with NYK-FIL as condition for the grant or release of the loan is not an act that can be considered in furtherance of NAS' social and civic purposes, considering that NAS will be involved in a commercial activity evidenced by the very nature of the Loan Agreement and the corresponding service obligation.

While this Office notes that the NTMA graduates have the primordial duty "to uphold the name of NYK, TDG, NYK-FIL, and NTMA,"[22] the aforementioned obligation to enter into shipboard contracts is no longer merely "encouraging them to constantly strive for excellence and achieve success in their undertakings."[23] Instead, it effectively forces the hand of the member-borrower to engage in a commercial and employment relationship with NYK-FIL.

Neither can the service obligation be considered as a mode of "[e]ncouraging the NTMA graduates/Alumni to participate in maritime-related socio-civic activities which will benefit the NTMA community."[24] To encourage means to help, to embolden, or to forward the NTMA graduates/Alumni. Whereas the phrase "[t]he officer **must render** either of the following shipboard services" means to **bind or constrain** the member-borrower in the performance of the shipboard services.

To reiterate for emphasis' sake, the service obligation connotes an active commercial and financial transaction, rather than mere community building, advocacy, and professional advancement.

[22] Article III of NAS' By-laws.
[23] Ibid.
[24] Ibid.

### d. The Repayment Scheme under the Loan Agreement is Inconsistent with NAS' Purpose.

It also bears to highlight that the Loan Agreement indicates that **"[f]ailure to pay shall be charged to the borrower's total contribution amount, to be reflected in the membership tier system."** This implies that: (a) the member has made a **contribution** to NAS; (b) in case of default, the unpaid loan amount shall be charged against the total of said **contribution**; and (c) NAS observes a **membership tier system** based on **contribution.**

To be sure, the total contribution amount includes the membership fee of ₱1,5000.00 and annual renewal fee of ₱1,000.00. Said fees have already accrued in favor of NAS, with the expectation that the same will be **collectively utilized** to serve the needs of its members **as a whole and in furtherance of its purpose.**

In an Opinion,[25] the Commission disallowed the Board of Trustees of the Filipino Society of Composers, Authors and Publishers, Inc. ("FILSCAP"), a non-stock, non-profit corporation, from passing a resolution granting its members the following benefits by way of financial assistance: (a) granting of non-monetary gifts in the form of grocery items and the like to the member family during FILSCAP's annual Christmas party; (b) reimbursement by FILSCAP up to a certain amount of any funeral expense incurred by any of its members and that immediate member's family; (c) reimbursement by FILSCAP up to a certain amount of any medical expense incurred by any of its members and that immediate member's family; and (d) as an alternative to item (c), shouldering the annual premium of a health card for each of its members. The Commission opined in this wise:

> It does not follow however, that non-stock corporations can make no profits. Many such corporations do obtain profits as incident to their operations, but unlike in stock corporations, **such profits are NOT distributed to its members, but are used for the furtherance of its purposes.**
>
> Although Section 36 (10) grants a corporation the power and capacity, "To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees," **the granting of the financial assistance you mentioned in your letter, to the MEMBERS of a non-stock corporation such as FILSCAP out of its profits is prohibited by Section 87,[26] for such cannot be considered as [in] "the furtherance of the purpose or purposes for which the corporation was organized."**
>
> In SEC-OGC Opinion No. 29-06 dated 07 June 2006, the Commission enumerated the characteristics of a non-stock corporation and concluded that,
>
> > "The following are the most common characteristics of a non-stock corporation:
> >
> > (1) **Any profit derived by it from any authorized activity cannot be distributed as dividends to its members;**
> > (2) It may not lawfully engage in any business activity for profit as it would run counter to its very nature as a non-profit entity;
> > (3) When incidental to the objects and purposes of the corporation and without the end of making profits to be distributed to the members, it may engage in certain economic activities stated in its articles of incorporation;
> > (4) Do not issue stock and distribute dividends to their members; they are created not for profit but for public good and welfare; and
> > (5) The mere fact that a non-stock corporation may earn profit does not make it a profit-making corporation where such profit or income is used to carry out the purposes set forth in the articles of incorporation and is not distributed to its incorporators, members, trustees or officers.
> >
> > In relation to the above-quoted provision and enumeration, it is clear that **non-stock corporations may not distribute its profits to its members. Thus, to address your first query, no profit derived by the non-stock corporation may ever be distributed or apportioned to the members of the board of trustees, nor to any officer or member thereof.** The corporation is allowed by law the use of such profits solely for the furtherance of the purpose or purposes for which the corporation was organized, and to those that are necessary and incidental thereto."
>
> **It is only upon dissolution when the members can reap for themselves any incidental income or profit made by non-stock corporations, as provided for in Section 87.[27]**

Glaringly, under the proposed Loan Agreement, NAS intends that the member-borrower's payment in arrears shall be charged to the member-borrower's total contribution amount. This repayment scheme

---

[25] SEC-OGC Opinion No. 31-11 dated 13 July 2011, addressed to Atty. Mark Thursday P. Alciso.
[26] *Now* Section 86 of the RCC.
[27] Emphasis and underscoring supplied. Citations omitted.

practically involves the use of the corporation's funds, *i.e., the member-borrower's total contribution amount,* to pay for the personal liability of said member-borrower—thereby, redounding to his personal benefit. In effect, it partakes the proscribed distribution of profits or income to the members prior to dissolution, and thus, cannot be considered to be in furtherance of the purpose for which NAS was organized.

***V. Conclusion.***

In view of the foregoing, we opine that NAS' proposed granting of loans is not incidental, necessary, or essential to carry out its purpose "to generate individual and collective support to continuously enrich the lives of the NTMA graduates/Alumni and help advance the interest of NTMA and its immediate community, *i.e., its cadets, faculty members and non-teaching personnel.*"

Accordingly, we answer both of your queries in the ***negative.***

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[28] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

Yours most respectfully,

**ROMUALD C. PADILLA**
*General Counsel*

[28] Section 7, SEC Memorandum Circular No. 15, Series of 2003.