Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

SEC-OGC Opinion No. 13-05
24 April 2013
Re: Corporate Term of Educational Corporations registered under Corporation Law

J. NERI AND ASSOCIATES
7th Floor, Ayala LIFE-FGU Center
Mindanao Avenue corner Biliran Road
Cebu Business Park, Cebu City

Attn.: Atty. Julius Z. Neri

Dear Sir;

This refers to your letter of 19 March 2013 inquiring about the following matters in relation to the corporate existence of the University of San Carlos (hereinafter, "USC") which will be discussed in the order below, to wit:

1. Can the SEC issue a definitive ruling on USC's corporate existence of fifty (50) years counted from May 1, 1980?

2. Whether or not USC can file an amendment to its Articles of Incorporation providing therein a definite term of existence of fifty (50) years prior to the last five (5) years of its corporate term as an exception to Section 11 of the Corporation Code.

Based on your representation, USC was registered with this Commission on 18 February 1911 under the provisions of the Corporation Law, Act No. 1459, on Educational Corporations. Under the Corporation Law, USC's corporate term is perpetual as the said law did not require a maximum corporate term for educational corporations. With the passage of the Corporation Code, Batas Pambansa Blg. 68, which took effect on 01 May 1980, any corporate existence is given a maximum period of fifty (50) years.

Pertinent to the discussion is Section 148 of the Corporation Code which provides:

"SECTION 148. Applicability to existing corporation. – 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 terms and conditions of its license, and shall be governed by the provisions hereof: Provided, That where any such corporation is affected by the new requirements of this Code, said corporation shall unless otherwise herein provided be given a period not more than two (2) years from the effectivity of this Code within which to comply with the same."

The Commission has previously ruled that in case of "failure on the part of affected corporations to amend their articles of incorporation to comply with the applicable provisions of the Code on or before May 1, 1982, the expiry date of the two (2) year period, the Commission will consider the provisions therein as written into the articles of incorporation as of May 1, 1980, the date of effectivity of the Corporation Code."[1] Hence, based on the said pronouncement, the 50-year period should be counted from 01 May 1980.

The 50-year period should not be counted from the date of registration as this would adversely affect the operations of pre-war schools which were established more than fifty (50) years from the date of effectivity of the Corporation Code since it would result in the dissolution of said corporations as the 50-year period had already lapsed. This situation, therefore, would be detrimental to students who might be affected by the dissolution of their schools.[2]

Likewise, it is worth mentioning that it is an established principle that retroactive laws are not favored if the same would take away or impair vested rights acquired prior to the enactment of the law. Indeed the Legislature would not have intended to deprive educational institutions of their right to exist granted them under the old Corporation Law.[3]

Thus, to avoid unjust results and in order to be consistent with the abovementioned previous ruling of the Commission on the application of Section 148 of the Corporation Code, it would be appropriate to reckon the 50-year period from the date of effectivity of the Corporation Code. This interpretation will not prejudice public interest, rather, it would enable educational corporations registered under the Corporation Law to continue serving the needs of the locality where the schools are located. For the Commission to rule otherwise would lead to manifest injustice which is not within the intent and purpose of the Legislature in enacting the Corporation Code.[4]

In this connection, USC, although originally registered with the Commission in 1911 with a perpetual corporate term, can now be deemed to exist only for a period of fifty (50) years reckoned from 01 May 1980, the date of the effectivity of the Corporation Code. Clearly, the corporate existence of USC will expire on 01 May 2030 unless sooner dissolved or extended within the prescribed period under the Corporation Code.

As to your second query, Section 11 of the Corporation Code states as follows, to wit:

> ***Sec. 11.*** **Corporate term.** - *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***

[1] SEC Opinion dated 26 April 1982 addressed to Atty. Edwin Reyes and SEC Opinion dated 29 June 1982 addressed to Mr. Gilbert B. Rosales as reiterated in SEC Opinion dated 25 September 1990 addressed to Atty. Sabino Padilla, Jr. and SEC Opinion No. 04-03 dated 04 February 2003 addressed to Atty. Francisco Collado.
[2] SEC Opinion dated 25 September 1990 addressed to Atty. Sabino Padilla, Jr.
[3] *Ibid.*
[4] *Ibid.*

> ***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.*** *(emphasis ours)*

You ask if, by way of exception, USC can be allowed to amend its Articles of Incorporation earlier than the five (5)-year period mentioned in Section 11 as above-quoted so that it can already provide a definite term of existence of fifty (50) years. We believe that such reason in and by itself is not a justifiable reason, as required by Section 11. It should be noted that all educational corporations registered under the Corporation Law were given a period of two (2) years from the effectivity of the Corporation Code, or from 01 May 1980 until 01 May 1982, to comply with the provisions of the latter, including the filing of amendments to their Articles of Incorporation to provide for a specific corporate term not exceeding fifty (50) years. USC did not take such opportunity to align its Articles of Incorporation within the period given, thereby binding it a corporate term of fifty (50) years from the effectivity of the Corporation Code. Therefore, pursuant to Section 11 of the Corporation Code, absent any justifiable reason, it is not yet the proper time for USC to file an amendment in relation to the extension of its corporate term.

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 issue 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.[5] 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

[5] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.