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

03 November 2015

SEC Opinion No. 15-13
Re: Amendment of By-Laws adding three (3) additional Corporate Officers designated as Presidents.

ATTY. EMILY SIBULO-HAYUDINI
Corporate Secretary
SEAOil Philippines, Inc.
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Pasig City, 1605 Philippines

Madame:

This is in response to your letter dated 30 September 2014, requesting our opinion regarding the legality and propriety of having three (3) Presidents in SEAOil Philippines Inc. (SPI).

You stated that currently, SPI is headed by the Chief Executive Officer/President, combining in one person the total responsibility of envisioning the long-term strategy and the day to day operations of the company. However, there is a plan to re-organize the company that entails the amendment of SPI's By-laws. You described the re-organization, as follows:

> "As proposed, SPI will have the Chief Executive Officer (CEO) who shall remain as the highest ranking officer and the public face of the company. As CEO, his main task shall be the formulation of long range plans and development of key initiatives. But in lieu of having only one President, the proposal is to have three (3) Presidents who shall be separately responsible for the three (3) major areas of business of SPI, namely, commercial sales, retail sales and lubes/motor additives. These three (3) lines of business cater to different customers of the company and it was thought that having three (3) different Presidents [to] handle the day to day operations of each business line would be of utmost advantage not only to the company but most importantly, to its customers. The three (3) Presidents would all be reporting directly to the CEO."

The pertinent provision of the Corporation Code provides:

> "Section 25. *Corporate officers, quorum.* – Immediately after their election, the directors of a corporation must formally organize by the election of **a *president***, who shall be a director, a *treasurer* who may or may not be a director, a *secretary* who shall be a resident and citizen of the Philippines, **and such *other officers as may be provided for in the by-laws***. Any two (2) or more positions may be held

concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The *directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation*. xxx xxx xxx
xxx xxx xxx
(Emphasis supplied)."

In a previous opinion[1], it is provided that:

> "As to the first issue, in the Corporation Code, there is no required designation of title of corporate officers, **only that there shall be a president,** a treasurer and a secretary. A perusal of the by-laws of Worldwide Filipino Alliance 2010, Inc. reveals that the officers of the association shall be a President, a Vice-President, a Secretary and a Treasurer. As it is planned by the corporation to add officers and adopt titles for officers different form those written in the by-laws, the change of these titles and the addition of officers must appear in the by-laws after the amendment to this effect has been duly approved by a majority vote of the members and by majority vote of the trustees, according to the manner of amendment as provided in the by-laws. (Emphasis supplied.)"

Thus, the law mandates that every corporation must have a President.

Generally, a president of a corporation is defined as the one placed in authority over others, a chief officer, a presiding or managing officer; a governor, ruler, or director.[2] Customarily, he is given general supervision and management of the business affairs of the corporation.

The Supreme Court ruled in the case of *People Aircargo and Warehousing Co. Inc. v. C.A*[3], that:

> "Inasmuch as **a corporate president is often given general supervision and control over corporate operations**, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. **In the absence of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties**." (Emphasis supplied.)

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[1] SEC-OGC Opinion No. 10-11 addressed to Mr. Rogelio B. Bantiles dated 07 March 2011.

[2] Black's Law Dictionary

[3] G.R. No. 117847. October 7, 1998

Further, the Corporation Code imbues definite powers and responsibilities upon the President, such as but not limited to the following:

a) To order the calling by the Secretary of a special meeting of the stockholders or members of a corporation for the purpose of removal of directors or trustees;[4]
b) To call for a special meeting of the board of directors or trustees at any time or as provided by the by-laws;[5]
c) To preside at all meetings of the directors or trustees as well as of the stockholders or members, unless the by-laws otherwise provides;[6]
d) To sign the certificate of stocks representing shares issued by the corporation;[7]
e) To sign the articles of merger or articles of consolidation;[8] and
f) To sign the verification of a petition for dissolution of the corporation.[9]

Because of the importance of his position, the law prescribes some qualifications/ disqualifications of a President, among which are that (1) he must be a director of the corporation, and (2) he must not concurrently hold the positions of Secretary or Treasurer.[10]

From the foregoing, it can be inferred that the position of a corporate president is reposed with duties and responsibilities provided by the law and jurisprudence, which can be further expanded by its by-laws.[11] Therefore, it serves not merely as a title of prestige or status, but also serves as a basis for its stockholders and the other persons/entities transacting with it to determine whether such person is clothed with authority to perform the duties conferred by the law and the functions given by the by-laws, within the general objectives of the corporation's business.

The by-laws must be crafted in such a way that the Commission can determine who the President is, for purposes of compliance with the afore-mentioned requirements of the Corporation Code. To allow three (3) more corporate officers, who would each be called as "President" could mislead and create confusion as to who should perform the duties enumerated by the law to be performed by the President, and as to whom such aforementioned qualifications/disqualifications must apply.

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4 Sec. 28, Corporation Code, B.P. 68

5 Sec. 53, Supra

6 Sec. 54, Supra

7 Sec. 63, Supra

8 Sec. 78, Supra

9 Sec. 119, Supra

10 Sec. 25, Supra

11 Sec. 47, Supra

In view thereof, we opine that considering the title of "President" of a corporation is reposed definite and prescribed qualifications and functions, SPI may not amend its by-laws to designate three (3) corporate officers as "President/s".

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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[12]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[12] SEC Memorandum Circular No. 15, Series of 2003.