Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

23 November 2016

SEC-OGC Opinion No. 16-27
RE: Corporate Term of Corporations Registered Under The Corporation Law

SALUMBIDES UGALINGAN & REYSIO-CRUZ
4th Floor, The West Wing Building
107 West Avenue, Quezon City

Attention: Atty. Aldwin B. Salumbides

Dear Atty. Salumbides:

This refers to your letter dated 26 September 2016, requesting for a legal opinion about the corporate term of Ropells, Incorporated (Ropells).

Ropells, as represented in your letter, was registered sometime in 1962 –prior to the passage of the Corporation Code (Code). You also disclosed that since then, the corporate term has not been extended, as no application was filed to amend Article IV of its Articles of Incorporation which provides an original fifty (50) year term. In this regard, you now ask the following:

1. "Has the corporate term of ROPELLS, INCORPORATED already expired?
2. Should its fifty (50) year corporate term be counted from 01 May 1980 which is the effectivity date of the Corporation Code?
3. When should ROPELLS, INCORPORATED amend its Articles of Incorporation to extend its corporate term?"

Based on records, Ropells is a stock corporation that was registered on 20 March 1962 under the Act No. 1459 or the Corporation Law (Corporation Law).

Section 7 of the Corporation Law prescribes a corporate term of fifty (50) years for stock corporations, to wit:

> "Section 7. Articles of incorporation of **stock corporations**, unless otherwise provided, shall be sufficient if they comply substantially with the following form:
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> xxx

FOURTH. That the term for which said corporation is to exist is **fifty (50) years** from and after the date of incorporation." (Emphasis supplied)

In compliance with the above, Ropells adopted a 50-year term in its Articles of Incorporation, as you represented. The counting of the 50-year term shall begin on the original date of its registration, which is on 20 March 1962. Given that Ropells has not amended its corporate term, the Commission, therefore, opines that such term had already expired on 19 March 2012.

Please be advised that the principle used by the Commission in its previous opinions with respect to the counting of the term of corporations registered under the Corporation Law from 01 May 1980, the effectivity of the Code, finds no application in this case. Unlike Ropells, which is a stock corporation, the previous opinions refer to educational institutions with perpetual corporate term prior to the Code.

In SEC-OGC Opinion No. 13-01, the Commission said:

"Pursuant to our records, PCA was registered with this Commission on 06 March 1958 under the provisions of the Corporation Law, Act No. 1459, on Educational Corporations. Under the Corporation Law, PCA's corporate term is perpetual as the said law did not require a maximum corporate term for educational corporations. After the passage of the Corporation Code, Batas Pambansa Blg. 68, which took effect on 01 May 1980, a maximum period of fifty (50) years was provided for corporate existence.

The issue at hand is whether or not PCA's corporate term has expired.

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 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.'

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,

[1] SEC-OGC Opinion 13-01 dated 21 March 2013 addressed to Fernandez & Associates c/o Atty. Merito R. Fernandez *citing* 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

based on the said pronouncement, the 50-year period should be counted from 01 May 1980.

xxx

> In this connection, PCA, although originally registered with the Commission in 1958 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 PCA will expire on 01 May 2030 unless sooner dissolved or extended within the prescribed period under the Corporation Code." [2]

In the matter at hand, the principle of the above-mentioned Opinion with respect to the automatic amendment of the Articles of Incorporation in light of new requirements finds no application because the 50-year term is not a new requirement for stock corporations that are not educational corporations. The original corporate term of Ropells, therefore, must be retained and must be counted from the date of its registration.

As to the matter concerning the extension of the corporate term, Ropells should have, pursuant to Section 148 of the Code, followed Section 11 of the Code stating that "no extension can be made earlier than five (5) years prior 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."[3] In short, Ropells should have amended its Articles of Incorporation to extend its corporate term within five years prior to the date of expiration.

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. 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.[4] 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.

CAMILO S. CORREA
General Counsel

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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-OGC Opinion 13-01 dated 21 March 2013 addressed to Fernandez & Associates c/o Atty. Merito R. Fernandez

[3] **Section 11.** *Corporate term.* –xxx That **no extension can be made earlier than five (5) years prior 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 and underscoring supplied).

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