Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

27 March 2018

SEC-OGC Opinion No. 18-07
RE: Qualifications of Members of the Board of Directors/Trustees

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Executive Director
Philippine Association of Colleges and Universities Commission on Accreditation
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Sir:

This refers to your letter dated 12 January 2018, requesting our opinion regarding qualifications of the members of the Board of Directors of your organization, the Philippine Association of Colleges and Universities Commission on Accreditation (PACUCOA).

You mentioned in your letter that the Board of Directors of PACUCOA issued a Resolution dated 24 April 2017 containing the qualifications of candidates for the Board. Specifically, the Resolution was issued to upgrade the qualifications of the candidates for the Board to include "TEN (10) YEARS OF EXPERIENCE AS ACCREDITOR WITH AT LEAST ONE ASSIGNMENT PER SEMESTER."

In your letter, you also cited Section 3, Article II of the PACUCOA's By-laws, which provides that "[n]ominations and election shall be supervised by the Board of Directors according to the approved guidelines."

Thus, you seek our opinion on whether your organization is required by law to include the qualifications of the Board of Directors in your Constitution and By-laws.

We answer in the affirmative.

By-laws signifies the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns, and its stockholders or members and directors and officers with relation thereto and among themselves in their relation to it. In other words, by-laws are relatively permanent and continuing rules of action adopted by the corporation for its own government and that of

the individuals composing it and having the direction, in whole or in part, in the management and control of its affairs and activities.[1]

Section 47 of the Corporation Code (Code) provides:

> "Section 47. Contents of by-laws. – Subject to the provisions of the Constitution, this Code, other special laws, and the articles of incorporation, a private corporation may provide in its by-laws for:
>
> xxx
> 5. **The qualifications**, duties and compensation **of directors or trustees**, officers, and employees;
> xxx." (emphasis ours)

We had long opined[2] that in the absence of a provision in the by-laws, a corporation cannot require additional qualification for directors other than the mandatory requirement under Section 23[3] and 92[4] of the Code.

Mere board resolution or approval is not sufficient to legally enforce a qualification/disqualification because it has to be clearly provided for in the corporate by-laws.[5] Guidelines issued by the management requiring additional qualifications for directors, president and vice-president, may only be effective if such are stated in the by-laws.[6] Neither can a corporation's committee on election issue a ruling requiring additional qualification for a director if the same is not stated in the by-laws.[7]

Thus, if a corporation wants to require additional qualification for a director, it must amend its by-laws in accordance with Section 48 of the Code.

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 under similar or dissimilar circumstances.[8] 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

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[1] SEC Opinion dated 10 June 1986 addressed to Mr. D.C. Cobalida, Jr.
[2] SEC Opinion dated 16 June 1995 addressed to Ms. Carina Z. Gregorio.
[3] "Section 23. Xxx. Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Xxx."
[4] "Section 92. Xxx. No person shall be elected as trustee unless he is a member of the corporation. Xxx."
[5] SEC Opinion dated 29 July 1999 addressed to Mr. Arjay Ronnel H. Julve; SEC Opinion dated 20 September 1984 addressed to Ms. Perla B. Sanchez; SEC Opinion dated 4 July 1984 addressed to Mr. Arsenio R. Reyes.
[6] SEC Opinion dated 8 December 1988 addressed to Mr. Ruben Jungaya.
[7] SEC Opinion dated 5 September 1984 addressed to Dr. Blanquita Sabater Paredes.
[8] SEC Memorandum Circular No.15, Series of 2003