Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 March 2019

SEC-OGC Opinion No: 19-11
Re: Corporate Term of Educational Institution Registered under the Corporation Law

LUCILLE FE R. MAGGAY-PRINCIPE
Attorney-at-Law
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Naga City, Philippines

Dear Atty. Maggay-Principe:

This refers to your letter dated 18 May 2018 requesting for the Commission's opinion on the corporate existence of University of Northeastern Philippines (UNEP), and if UNEP is legally dissolved, on how the dissolution affects the implementation of a court decision rendered in a civil case.

In your letter, you stated that UNEP, formerly Mabini Memorial Colleges, Inc., was originally incorporated as a stock corporation under SEC Registration No. 34460 on July 28, 1948. However, on 04 February 1968, its Articles of Incorporation (AOI) was revised with a specific term of fifty (50) years from and after date of incorporation.

You further stated that in a civil case filed by your client against UNEP and its sitting Board of Trustees (Board), the Court rendered a decision dated 10 January 2018 ordering, among others, the removal of the defendants therein as trustees and the calling of a meeting for the purpose of electing Board members. Said decision become final and executory on 20 March 2018. Hence, your queries.

FIRST QUERY

In a previous Opinion[1], the Commission held that:

> "Under the Corporation Law, no maximum corporate term of existence was prescribed for educational institutions, thus in cases where the AOI does not specify a term, the corporate term of such institution is deemed perpetual."

[1] SEC-OGC Opinion No. 16-24 dated 13 October 2016 addressed to Ma. Lerma M. Reyes.

Thus, the rule is that the term of an educational institution incorporated under the Corporation Law or Act No. 1459 is perpetual. However, if the educational institution amended its AOI specifically limiting its corporate term after its incorporation, the fixed or definite term should be followed.[2]

When UNEP incorporated in 1948, its AOI did not provide for a term, hence its term was deemed perpetual under the provisions of the Corporation Law effective at that time. However, when UNEP amended its AOI in 1968, expressly providing therein a term of 50 years from date of incorporation, UNEP's corporate term had been fixed to a period of 50 years reckoned from 28 July 1948, unless sooner dissolved or extended within the prescribed period under the Corporation Code.

Thus, if UNEP failed to extend its term on or before 28 July 1998, the expiry date of its corporate term, it is deemed legally dissolved.

SECOND QUERY

As to your second query on how UNEP's dissolution would affect the implementation of the court decision which directs the election of Board of Trustees, please be informed that as a matter of policy, the Commission refrains from rendering opinion on issues which had been decided by the courts or have been elevated to the court and are pending therein.[3] Pursuant thereto, the Commission cannot categorically answer your second query.

However, for purposes of information only, the Commission imparts the following:

Section 22 of the Corporation Code provides:

> Section 122. Corporate liquidation. - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.
>
> At any time during said 3 years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest,

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[2] SEC-OGC Opinion No. 18-12 dated 06 August 2018 addressed to Mr. Vicente R. Paguila.

[3] SEC Memorandum Circular No. 15, series of 2003.

> all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

In reference to the aforesaid provision, the Commission previously stated in an opinion, thus:

> It is clear from the foregoing provision that upon the expiration of the corporate term, the corporation ceases to exist and is dissolved *ipso facto*. Hence, it can no longer continue the business or purposes for which it was organized. However, it may be continued as a corporate body for 3 years only for the purposes of winding up and liquidation. Thus, while the corporation is automatically dissolved after the expiration of its term, nevertheless it may be continued after the time when it would have been dissolved for the purpose of enabling it to settle and close its affairs. Accordingly, it may hold an election but only for winding up and liquidation purposes, *e.g.* for the purpose of prosecuting and defending suits by or against the corporation to enable it to settle and close its affairs.[4]

Please be informed also that RA 11232 or the Revised Corporation Code (RCC) took effect last February 23, 2019. In Section 11 of the RCC, "a corporation whose term has expired, may, at any time, apply for a revival of its corporate existence xxx"

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.[5]

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[4] SEC Opinion dated 12 April 1993 addressed to Mr. Juvencio L. Ocampo.
[5] SEC Memorandum Circular No.15, Series of 2003.