Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

14 June 2019

SEC-OGC Opinion No. 19-22
Re: Secondary purpose

Juan Miguel Macapagal Arroyo
Commodore
Subic Bay Yacht Club, Inc.
Rizal Highway corner Burgos Street
Subic Bay Freeport Zone,
Olongapo City

Attention: Commodore Arroyo

This refers to your letter dated 04 April 2019 seeking confirmation that Subic Bay Yacht Club, Inc. (SBYC) is authorized to enter into lawful arrangements and agreements with third persons, whether natural or juridical, for the use of available spaces and facilities within the club for valuable consideration, and for purposes which are not contrary to or inconsistent with the objectives of the corporation.

As stated in your letter, the SBYC has largely unutilized spaces and facilities within its Club House which may be dedicated to recreation, accommodations and dining, for purposes of promoting the social, physical and well-being of its members. The income derived from such spaces and facilities may also be used to augment its resources for purposes of continuously maintaining and operating the marina and yacht club house in a manner suitable to and befitting its members.

Third parties have expressed their intent to utilize the aforesaid spaces and facilities for valuable consideration. However, leasing is not specified in SBYC's purpose.

Hence, the query.

It is well-settled that a corporation has only such powers as are expressly granted in its charter or in the statutes under which it is created or such powers as are necessary for the purpose of carrying out its express power.[1] A corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 36 of the Corporation Code, which is reproduced as Section 35 of the Revised Corporation Code[2] (RCC) , and those which are sanctioned by the State in the corporation's articles of incorporation. Implied or incidental powers, on the other hand, are the corporation's "powers, attributes and properties . . . incident to its existence"[3], which may be "essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation". [4]

In this connection, there are general powers that may be exercised by every corporation whether or not such powers are stated in the articles of incorporation or by-laws.[5] Section 35(g) of the RCC enumerates the powers expressly given to every corporation created under the general incorporation law, to wit:

> "SEC. 35. *Corporate Powers and Capacity.* – Every corporation incorporated under this Code has the power and capacity:
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> xxx xxx xxx
>
> (g) To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
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> xxx xxx xxx."

The Commission has previously opined that: "Fletcher has regarded the power to acquire and convey property as an incident to every corporation although such power is expressly conferred to corporations

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[1] SEC Letter dated 20 June 1989 addressed to Mr. Philipps C. Comandante, citing 13 Am. Jur. Sec. 739

[2] Republic Act No. 11232

[3] SEC-OGC Opinion No. 20-09, citing Section 2 of the Corporation Code

[4] Paragraph (g) and (k) of Section 35 of the Revised Corporation Code

[5] De Leon, H. The Corporation Code of the Philippines Annotated, 267 (1993).

incorporated in accordance with Section 36 (7) of the Corporation Code.[6] ***Therefore whether or not such power is included in what the corporation could do and perform under its articles of incorporation, it is nevertheless, deemed to be within the scope of its corporate powers by express declaration of Section 36[7] of the Code.***"[8]

Article II of SBYC's Articles of Incorporation provides in part, to wit:

> "SECOND: That the purpose for which the said Corporation is formed are:
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> PRIMARY PURPOSE
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> To construct, maintain, and operate a marina and yacht club house, tennis courts, squash courts, swimming pools, and other indoor and outdoor related sports and recreational facilities, especially those related to water sports, **with the main objective of promoting the social, educational, and athletic well-being of its stockholders.**
>
> SECONDARY PURPOSE
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> In order to carry out the foregoing purpose, the Corporation shall have the following incidental objects and powers:
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> 1. To purchase, acquire, **own, lease**, sell and convey real properties such as buildings, boatyards, warehouses and machineries, equipment and other personal properties **as may be necessary or incidental to the conduct of the corporate purpose**, and to pay in cash, shares of its capital stock, debentures and other evidences of indebtedness, or other securities, as may be deem expedient, for any property acquired by the Corporation.
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> 2. xxx xxx xxx;
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> 3. **To invest and deal with the money and properties of the Corporation in such manner as may from time to time be considered wise or expedient for**

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[6] Now Section 35 (g) of the Revised Corporation Code

[7] *Ibid.*

[8] Lopez, R. The Corporation Code of the Philippines, Vol. 2, 512 (1994), citing SEC Opinions dated September 6, 1982, Marble Corporation of the Philippines and January 25, 1991, Philippine Library Materials Project Foundation, Inc.

> **the advancement of its interests** and to sell, dispose of or transfer the business, properties and goodwill of the Corporation or any part thereof for such consideration and under such terms as it shall see fit to accept;
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> xxx xxx xxx."

It should be noted that Item 1 in SBYC's secondary purpose clause is substantially similar to Section 35 (g) of the RCC. Hence, it may not strictly be construed as a secondary purpose independent or distinct from its primary purpose because it is a general power of every corporation allowed under the said law.[9]

The question of whether a particular transaction is necessary in the pursuit of the business of the corporation is for the management body, the board of directors, to determine.[10] As per SBYC, the proposed arrangements/agreements with third parties will result in the promotion of the social and physical well-being of its members. Further, the income derived from such spaces and facilities may be used to augment its resources for purposes of continuously maintaining and operating the marina and yacht club house in a manner suitable to and befitting its members. Thus, considering SBYC's representation, it can lease real property or enter into agreements with third parties, so long as it remains necessary in the conduct of its corporate business.

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

CAMILO S. CORREA
General Counsel

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[9] SEC-OGC Opinion No. 11-33 dated 29 July 2011
[10] SEC Opinion dated 11 July 1996 addressed to Mr. Roberto Jose Ramos; SEC Opinion dated 26 December 1996 addressed to Atty. Danilo M. Castrio
[11] SEC Memorandum Circular 2003-15, No. 7.