Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

31 January 2020

SEC-OGC Opinion No. 20 – 01
Re: Publicly Listed Company

Quiason Makalintal Barot Torres Ibarra Sison & Damaso
21st Floor, Robinsons – Equitable Tower
4 ADB Avenue Cor. Pedro Poveda St.
Ortigas Center, Pasig City

Attention: Atty. Ruelito Q. Soriano, Atty. Ma. Christine A. Aberin, and Atty. Paulo S. Faustino

Gentlemen / Ladies:

This refers to your letter dated 19 March 2019 requesting an opinion on whether Energy Development Corporation (EDC) is still a publicly – listed company after its delisting from the Philippine Stock Exchange (PSE).

In your letter, you mentioned that EDC filed with the PSE a Petition for the Voluntary Delisting of its common shares, which the PSE approved in its Memorandum dated 23 November 2018. The delisting of the shares became effective on 29 November 2018.

Moreover, you acknowledged in your letter that EDC should comply with the SEC Memorandum Circular No. 6, Series of 2009, otherwise known as "Revised Code of Corporate Governance" (RCCG), since, at present, it still has debt securities which are registered with the Commission and listed with the PDEx and has assets in excess of Fifty Million Pesos (Php 50,000,000.00) and more than two hundred (200) stockholders owning at least one hundred (100) shares each.

Given its delisting of shares in the PSE, EDC seeks clarification on whether it is still considered a publicly – listed company, thereby making ***SEC Memorandum Circular No. 19, Series of 2016, otherwise known as "the Code of Corporate Governance for Publicly – Listed Companies" (CG Code for PLCs),*** still applicable to it.

Specifically, you now seek clarification on the following matters:

> 1) Whether or not the term "publicly - listed company" refers to a company with existing registration statements filed with the Commission and whose shares are listed and traded in a stock exchange;

2) On the basis of the above definition, whether or not EDC is no longer considered a publicly – listed company; and

3) Whether or not the CG Code for PLCs applies to EDC considering that its shares have already been delisted from the PSE.

Considering that queries number 1 and 2 were posed within the context of compliance with the CG Code for PLCs, the ultimate and only issue to be resolved is query number 3, which we answer in the negative.

The CG Code for PLCs, which was released on 22 November 2016, superseded the RCCG insofar as publicly – listed companies are concerned.

Under the RCCG, the following are the covered companies:

" x x x registered corporations and [to] branches or subsidiaries of foreign corporations operating in the Philippines that:

1. Sell equity and / or debt securities to the public that are required to be registered with the Commission; or
2. Have assets in excess of Fifty Million Pesos and at least two hundred (200) stockholders who own at least one hundred (100) shares each of equity securities; or
3. **Whose equity securities are listed on an Exchange**; or
4. Are grantees of secondary licenses from the Commission." (Emphasis supplied)

The CG Code for PLCs was intended to cover the third type of corporations in the above enumeration i.e. whose equity securities are listed on an exchange. However, unlike the RCCG which specifically mentions equity securities, the CG Code for PLCs does not make any distinction between equities and debt securities.

To avoid confusion, the Commission *En Banc* issued SEC Resolution No. 760, Series of 2017, which reads as follows:

SEC RES. No. 760, s. of 2017

RESOLVED, to **APPROVE** the recommendation of the Corporate Governance and Finance Department that the new Code of Corporate Governance for Publicly – listed Companies **shall cover only those companies whose equity securities are listed on the Philippines Stock Exchange,** and that companies with the debt securities listed on the Philippine Dealing Exchange will be covered in the Code of Corporate Governance for Public Companies and Registered Issuer that will be released by the end of the year (2017)." (emphasis supplied)

Based on the foregoing, PLCs, as mentioned in the CG Code and for purposes of compliance therewith, shall only cover companies whose securities are listed in the PSE. EDC, having voluntarily delisted its shares in the PSE, is ***therefore excluded from the coverage of the CG Code for PLCs***.

Notwithstanding the exclusion of EDC from the application of the CG Code for PLCs, ***EDC must be reminded that as a registered issuer, it is now covered by the recently issued SEC Memorandum Circular No. 24, Series of 2019 or the Code of Corporate Governance for Public Companies and Registered Issuers, which was issued by the Commission on 19 December 2019.***

It shall be understood, however, that the above-stated 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.[1]

Please be guided accordingly.

Very truly yours,

ROMUALD C. PADILLA
OIC - General Counsel

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