Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 22-14

Re: Legality of converting a non-stock, non-profit corporation to a stock corporation

7 October 2022

CAPT. POL WINSTON G. HABOC
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Dear Capt. Haboc:

This refers to your letter dated 12 July 2022 requesting for an opinion on the legality of converting a non-stock, non-profit corporation to a stock corporation.

In your letter, you disclosed the following:

a) That you are representing a non-stock, non-profit educational corporation that has been operating for thirty (30) years, conducting specialized training for maritime professionals; and
b) That the non-stock, non-profit educational corporation intends to convert into a stock corporation.

You are now asking for an opinion on the following matters:

a) "Whether a non-stock, non-profit corporation may be converted into a stock corporation without liquidating its assets?";
b) "Whether a non-stock, non-profit corporation may be converted into a stock corporation after it liquidates its assets?"; and
c) "Whether an undertaking in the Corporate By-laws indicating that the corporation is accountable for the obligations acquired while it was still a non-stock corporation sufficient if the corporation does not liquidate its assets?"

Nature of Non-stock Corporations

Under Republic Act (R.A.) No. 11232 or the Revised Corporation Code of the Philippines (RCCP)[1], corporations can be classified either as stock corporations or non-stock corporations. On the one hand, ***stock corporations*** are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held.[2] On the other hand, ***non-stock corporations*** are those where no part of its income is distributable as dividends to its members, trustees, or officers.[3] The following are the most common characteristics of a non-stock corporation:

[1] Republic Act (R.A.) No. 11232, 23 February 2019.
[2] Section 3, RCCP.
[3] Section 86, RCCP.

a) Any profit derived by it from any authorized activity cannot be distributed as dividends to its members;
b) It may not lawfully engage in any business activity for profit as it would run counter to its very nature as a non-profit entity;
c) When incidental to the objects and purposes of the corporation and without the end of making profits to be distributed to the members, it may engage in certain economic activities stated in its articles of incorporation;
d) Does not issue stock and distribute dividends to its members; it is created not for profit but for public good and welfare; and
e) The mere fact that a non-stock corporation may earn profit does not make it a profit-making corporation where such profit or income is used to carry out the purposes set forth in the articles of incorporation and is not distributed to its incorporators, members, trustees or officers.[4]

Conversion of a Non-stock Corporation to a Stock Corporation

As to your first and third questions, the answer is in the negative. A non-stock corporation may not be "converted" into a stock corporation without liquidating its assets nor is an undertaking in the Corporate By-laws indicating that the corporation is accountable for the obligations acquired while it was still a non-stock corporation sufficient. The *SEC Opinion addressed to Atty. Maria Clara Tankeh-Asuncion dated 20 March 1995* is instructive:

> As aptly defined in Section 87 of the Corporation Code,[5] a "non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees or officers," that is, that the members of a non-stock corporation are not entitled to any profit or interest in the corporate assets that may be obtained out of the operation or activities of the corporation. Until the corporation is dissolved and unless it is so provided in the articles of incorporation or by-laws, the members are not entitled to any beneficial or vested interest over the assets of a non-stock corporation. In other words, a non-stock, non-profit corporation only holds its funds in trust for carrying out the objectives and purposes expressed in its charter or articles of incorporation.
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> The conversion of an existing "non-stock, non-profit corporation" into a "stock corporation" by mere amendment of the articles of incorporation would be tantamount to ***distribution of the corporate assets or income of the corporation to its members*** inasmuch as thereafter they automatically become stockholders thereof. This scheme might defraud the public who may have contributed donations, gifts or grants to the non-stock, non-profit corporation since after its conversion the donated corporate assets would in effect be treated as paid-in capital or subscription payments of the stockholders.[6]
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> Thus, the Commission previously ruled that ***a non-stock corporation cannot be converted into a stock corporation by mere amendment of the articles of incorporation.*** (Emphasis supplied)

As to your second question, the former members of the non-stock educational corporation may incorporate and organize the educational institution as a stock corporation after liquidating its assets in accordance with the provisions of the RCCP. The Commission previously opined that:

> For purposes of transformation, it is fundamental that the non-stock corporation must be ***dissolved first*** under any of the methods specified in Title XIV of the Corporation Code[7] so that the corporate assets shall be ***liquidated*** in accordance with the distribution procedure for non-stock corporations. Thereafter, the ***members thereof may organize a stock corporation directed to bring profits or pecuniary gains to themselves.***[8] (Emphasis supplied)

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[10] If upon

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[4] SEC-OGC Opinion No. 29-06 addressed to Ms. Rayla Melchor Santos dated 7 June 2006.
[5] Now Section 86, RCCP.
[6] SEC-OGC Opinion addressed to Atty. Maria Clara Tankeh-Asuncion dated 20 March 1995.
[7] Now Title XIII of the RCCP.
[8] SEC-OGC Opinion addressed to Mr. Conrado B. Roxas dated 24 February 1989 as cited in SEC-OGC Opinion addressed to Atty. Maria Clara Tankeh-Asuncion, *supra*.
[10] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.

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

Very truly yours,

ROMUALD C. PADILLA
General Counsel