Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 23-01
Re: Powers, Citizenship, Residency and Educational Requirements of the Board of Trustees of an Educational Institution

17 January 2023

PHILIPPINE WOMEN'S COLLEGE OF DAVAO
Juana Subdivision, University Avenue
Matina, Davao City, Davao Del Sur 8000

Attention: MS. MARY JUDE B. ICASIANO

Dear Ma'am:

This refers to your letter dated 12 October 2022 requesting the Commission's opinion regarding the Board of Trustees of your educational institution, particularly on the powers, citizenship, residency, and educational requirements of its members.

You stated in your letter that Philippine Women's College of Davao (PWC Davao) is a non-stock non-profit corporation offering pre-school, high school and tertiary education in Davao for almost seventy (70) years.

Specifically, you are requesting guidance on the following:

1. Being a Philippine educational institution, are non-Filipinos allowed in the school's Board of Trustees? Anent to this, is Philippine residency a requirement for a Trustee? Is Philippine residency likewise a qualification to become a member of PWC Davao?
2. If non-Filipinos are not qualified to become Board of Trustees, are they qualified to become members of the PWC Davao considering that it is the members who elect the Board of Trustees?
3. Can a Filipino citizen who became an American citizen but residing in the USA be qualified to become a Trustee? Is a person who carries both Filipino and American citizenship qualified to be a Trustee and a member of the School?
4. Can a Trustee who did not finish his Bachelor degree qualified to become a Trustee? The Manual of Regulations for Private Higher Education (MORPHE) prescribes a minimum requirement for higher educational institution to be at least a graduate of a bachelor degree. Whose qualification standard will be followed, the one stated in the articles of incorporation or the MORPHE?
5. Since the school is a non-stock, non-profit organization and the Board of Trustees does not own the school, can the school be sold by the action of the same Board of Trustees? Does the provision of transfer or donation for non-stock non-profit educational institutions have any relevance in such a situation?

6. What powers and authorities are vested in the Chairman of the Board of Trustees? Can he/she institute action to avert untoward policy/Board actions that clearly threaten to disrupt the school's administrative work and operations? Can the Chairman discipline hostile, rude, and discourteous Trustees considering all of them are duly elected officers?

Qualifications of Directors or Trustees

The Revised Corporation Code (RCC)[1] provides for the minimum qualifications of the board of directors or trustees of a corporation, to wit:

> "SECTION 22. *The Board of Directors or Trustees of a Corporation; Qualification and Term.* – xxx xxx xxx
>
> ... A director who ceases to own at least one (1) share of stock or a **trustee who ceases to be a member** of the corporation shall cease to be such. xxx
>
> xxx xxx xxx
>
> SECTION 26. *Disqualification of Directors, Trustees or Officers.* – A person shall be **disqualified from being a director, trustee or officer** of any corporation if, within five (5) years prior to the election or appointment as such, the person was:
>
> (a) Convicted by final judgment:
> (1) Of an offense punishable by imprisonment for a period exceeding six (6) years;
> (2) For violating this Code; and
> (3) For violating Republic Act No. 8799, otherwise known as "The Securities Regulation Code";
> (b) Found administratively liable for any offense involving fraudulent acts; and
> (c) By a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) above.
>
> The foregoing is without prejudice to qualifications or other disqualifications, which the Commission, the primary regulatory agency, or the Philippine Competition Commission may impose in its promotion of good corporate governance or as a sanction in its administrative proceedings.
>
> xxx xxx xxx
>
> Section 91. *Election and Term of Trustees.* – xxx
>
> Except with respect to independent trustees of nonstock corporations vested with public interest, **only a member of the corporation shall be elected as trustee**. xxx." (*Emphasis and underscoring supplied*)

Moreover, Section 46 of the RCC provides that the bylaws may require qualifications for directors or trustees in addition to the qualifications and disqualifications abovementioned, to wit:

> "SECTION 46. *Contents of By-Laws.* – A private corporation may provide the following in its bylaws:
> xxx xxx xxx
>
> (f) The **directors' or trustees' qualifications**, duties and responsibilities, the guidelines for setting the compensation of directors or trustees and officers, and the maximum number of other board representations that an independent director or trustee may have which shall, in no case, be more than the number prescribed by the Commission; xxx" (*Emphasis and underscoring supplied*)

Thus, it is clear from Section 46(f) of the RCC that corporations are allowed to provide in their bylaws the qualifications of directors or trustees in addition to the mandatory qualifications and disqualifications in Sections 22, 26 and 91. For example, if a corporation provides in its bylaws the requirement that majority of its directors must be residents of the Philippines, then, it may do so. Such corporation may not elect directors, all of whom are non-residents of the Philippines, if its bylaws still requires that the majority of the elected directors must be residents of the Philippines.[2] Corporations with bylaws containing the residency requirement which desire to remove such requirement must amend their bylaws to formalize such choice pursuant to Section 46(f) of the RCC, the provisions of Section 22 notwithstanding.[3]

---

[1] Republic Act (R.A.) No. 11232, 23 February 2019.
[2] SEC-OGC Opinion No. 22-07 dated 26 May 2022 addressed to Atty. Rowena Disini.
[3] *Id.*

The Commission has previously opined[4] that mere board resolution or approval is not sufficient to legally enforce a qualification or disqualification because it has to be clearly provided for in the corporate by-laws. 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.[5]

Citizenship of Directors or Trustees

The RCC does not specifically mention any restriction on the *citizenship* of the person to be elected as member of the board of directors or trustees.

However, while the RCC does not specifically impose restriction on the citizenship of the members of the board of directors or trustees, the same shall be subject to the following: 1) the additional qualifications of a director or trustee that a private corporation may set forth in its bylaws as provided in Section 46(f) of the RCC; and 2) the requirements under the 1987 Constitution, special laws such as the Commonwealth Act No. 108 or the Anti-Dummy Law[6] and/or special rules implemented by the regulatory authority of the industry such as the Manual of Regulations for Private Higher Education of 2008 (MORPHE) issued by the Commission on Higher Education (CHED)[7].

The 1987 Constitution requires "the control and administration of educational institutions to be vested in citizens of the Philippines".[8] Foreigners are not allowed any control and administration of educational institutions, thus are barred from becoming members of the Board of Directors/Trustees of educational institutions. This prohibition/restriction against foreigners applies to all persons who are not citizens of the Philippines, including natural-born citizens of the Philippines who have lost their Philippine citizenship by acquiring naturalized citizenship.[9]

Moreover, the MORPHE provides that "the control and administration of higher educational institutions shall be vested in citizens of the Philippines *except* those established by religious groups or foreign mission boards."[10]

The citizenship requirement of the board of trustees is also subject to the provisions of PWC Davao's bylaws. PWC Davao's latest bylaws[11] provide:

> "ARTICLE I
> MEMBERS
>
> Section 1. QUALIFICATION & ELECTION. – Any person, of legal age, **a resident and citizen of the Philippines** and in good standing in his or her community, may be nominated for membership by any member of record of the corporation, and shall be elected by the affirmative vote of the majority of all the members of the corporation.
>
> xxx xxx xxx
>
> ARTICLE II
> BOARD OF TRUSTEES
>
> Section 1. ELECTION. – The election of a trustee to succeed the trustee of the corporation whose term of office expires at the end of the next preceding year, shall be held at the annual meeting of the members of the corporation. **Only members of the corporation may be elected trustee,** and any trustee elected shall serve for a term of five years and until his or her successor has been duly elected and qualified as provided by law and these by-laws." (*Emphasis and underscoring supplied*)

---

[4] SEC-OGC Opinion No. 18-07 dated 27 March 2018 addressed to Adlai Castigador.
[5] *Ibid*, citing SEC Opinion dated 8 December 1988 addressed to Mr. Ruben Jungaya.
[6] Commonwealth Act No. 108, An Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges. As amended by R.A. 421, R.A. 134, R.A. 6084, and P.D. 715, October 30, 1936
[7] Memorandum Order No. 40, series of 2008.
[8] Section 4(2), Article XIV, 1987 Constitution.
[9] SEC-OGC Opinion No. 16-18 dated 21 July 2016 addressed to Wendell Ganhinhin.
[10] Section 31, Article VII, MORPHE.
[11] A copy of which was received on 6 January 2023.

TÜVRheinland CERTIFIED
Management System ISO 9001:2015

Thus, to answer your first, second and third query on citizenship, only citizens of the Philippines may be members of PWC Davao and of its Board of Trustees. Hence, a Filipino citizen who loses his Philippine citizenship and becomes an American citizen is disqualified from becoming a member of PWC Davao and of the Board. However, dual citizens or persons carrying both Filipino and foreign citizenship, may be members of PWC Davao and of the Board as long as long as said persons do not lose their Filipino citizenship in the manner provided by law.[12]

Residency Requirement of Directors or Trustees

Section 23 of the old Corporation Code provides that "a majority of the directors or trustees of all corporations must be residents of the Philippines." On the other hand, Section 22 of the RCC provides for the qualifications and term of the board of directors or trustees of a corporation **which does not anymore include the residency requirement.**[13]

Thus, Philippine residency is no longer a requirement under the RCC to be elected as a trustee of a corporation. However, as discussed above, if a corporation provides in its bylaws the requirement that majority (or all) of its directors must be residents of the Philippines, then, it may do so. Such corporation may not elect directors, all of whom are non-residents of the Philippines, if its bylaws still requires that the majority of the elected directors must be residents of the Philippines.

With regard to the qualifications of a member of the corporation, membership in a non-profit or non-stock corporation is acquired by complying with the particular manner or mode of acquiring membership therein as provided in its valid by-laws.[14] Relatedly, *membership in a nonstock corporation and all rights arising therefrom are* ***personal*** and nontransferable, unless the articles of incorporation or the bylaws otherwise provide.[15]

As regards PWC Davao's bylaws[16], Article I Section 1 thereof requires that **all members be residents and citizens of the Philippines**. Hence, as to the second and third part of your first query, since Philippine residency is required to become a member of PWC Davao and only members can be elected as a trustee pursuant to Article II Section 1 of the PWC Davao bylaws, all members of the corporation and its trustees must be residents of the Philippines.

Educational Requirement of Directors or Trustees

As to your fourth query, there is also no educational requirement for trustees in the RCC nor in the bylaws of PWC Davao; however, this is also subject to the provisions of the 1987 Constitution, special laws and special rules by the regulatory agency.

The MORPHE requires that "every member of the Board of Trustees or Directors of a private higher educational institution shall possess at least a bachelor's degree."[17]

Sale or Transfer of a Non-Stock Non-Profit Educational Institution

As to your fifth query, a corporation may, by a majority vote of its board of directors or trustees, sell or otherwise dispose of its property and assets.[18] The property of a corporation is not the property of the stockholders or members, and as such, may not be sold without express authority from the board of directors.[19]

---

[12] "Loss and reacquisition of Philippine citizenship is governed by Commonwealth Act No. 63, as amended, and Republic Acts No. 965 and 2639, and Presidential Decree No. 725 on repatriation." Bernas, Joaquin G., *"The 1987 Philippine Constitution: A Commentary"* (2009 ed).
[13] Supra, no. 2.
[14] SEC Opinion dated 9 December 1985 addressed to Ms. Elisa Talon.
[15] Supra, no. 11. Section 89 of the RCC
[16] Supra no. 11.
[17] Supra, no. 7.
[18] Section 39, RCC.
[19] Lintonjua vs. Eternit Corporation, G.R. No. 144805, 8 June 2006.

TÜVRheinland CERTIFIED
Management System ISO 9001:2015

However, the sale of the school of PWC Davao may be considered as **the sale of all or substantially all of the corporations' property and assets**. The RCC defines a sale or disposition of substantially all assets and property of a corporation as one by which the corporation "would be rendered incapable of continuing the business of accomplishing the purpose for which it was incorporated".[20]

Section 39 of the RCC states that the sale of all or substantially all of the assets must be approved by a majority vote of its board of directors or trustees, and must be authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose.[21]

Since the sale of the school would render PWC Davao incapable of continuing its business, the sale must be authorized by the vote of two-thirds (2/3) of the members in a members' meeting duly called for the purpose.[22] Sale by the Board of the only corporate property without compliance with Section 39 of the RCC requiring authorization of the members representing at least two-thirds (2/3) of the membership, would make the sale null and void.[23]

Powers of the Chairman of the Board of Trustees

As to your sixth query, please be advised that as a matter of policy, the Commission does not, or refrains from rendering opinion on matters which 1) involve substantive and contractual rights of private parties who would, in all probability, contest the same in court in an intra-corporate case[24] if the opinion turns out to be adverse to their interest[25]; and 2) involve the exercise of business discretion or judgment which properly falls within the competence of the management of the entities concerned.[26]

Your query involves issues that pertain to the authorities vested in the Chairman vis-à-vis those of the Board, and the primacy or superiority of the former over the latter, or vice versa. Hence, we cannot categorically answer your query.

However, ***for purposes of information only***, the following may be imparted:

The bylaws of PWC Davao enumerates the powers and duties of the Board and of the Chairman, to wit:

"ARTICLE II
BOARD OF TRUSTEES

Section 8. POWERS AND DUTIES. – The Board of Trustees shall have the following powers and duties:
(a) To have general and direct supervision of the operation of the college;
(b) To elect a Chairman, a Treasurer and a Secretary, the former two of whom must be trustees;

---

[20] Strategic Alliance Dev. Corp. vs. Radstock Securities Ltd., G.R. Nos. 178158 & 180428, 4 December 2009.
[21] "Section 39. Sale or Other Disposition of Assets. – Subject to the provisions of Republic Act No. 10667, otherwise known as the "Philippine Competition Act", and other related laws, a corporation may, **by a majority vote of its board of directors or trustees,** sell, lease, exchange, mortgage, pledge, or otherwise dispose of its property and assets, upon such terms and conditions and for such consideration, which may be money, stocks, bonds, or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient.

A sale of all or substantially all of the corporation's properties and assets, including its goodwill must be authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or at least two-thirds (2/3) of the members, in a stockholder's or members' meeting duly called for the purpose.

In nonstock corporations where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section.
xxx xxx xxx"
[22] *Ibid.*
[23] Islamic Directorate vs. Court of Appeals, G.R. No. 117897, 14 May 1997; Peña vs. Court of Appeals, G.R. No. 91478, 7 February 1991.
[24] Jurisdiction over intra-corporate disputes is with the regular courts, pursuant to Section 5.2 of the Securities Regulation Code.
[25] SEC Memorandum Circular No. 15, series of 2003, Section 5.2.
[26] *Ibid.*, Section 5.9.

(c) To appoint and fix the compensation of the officers, deans, department heads, professors, instructors, lecturers, assistants and employees of the college, and to suspend or dismiss any of them for cause;
(d) To make and promulgate, from time to time, rules and regulations affecting the operation of the college, which are not inconsistent with law or these by-laws;
(e) To prepare and approve the annual budget of expenditures of the school;
(f) To create such committees as are deemed necessary and to define their respective powers;
(g) To do all such other duties and things which are incidental to a Board of Trustees of the educational institution in accordance with law or government regulations and orders.

ARTICLE III
OFFICERS

Section 1. CHAIRMAN. – The Chairman, who shall be elected by the trustees from among themselves and who shall serve as such for the term for which he shall serve as trustee, shall have the following powers and duties:
(a) To preside over all meetings of the members and trustees of the corporation;
(b) To have general supervision of the affairs of the corporation;
(c) To sign all contracts, documents and other papers, of the corporation as authorized by the Board of Trustees;
(d) To render reports to the Board of Trustees and members of the corporation;
(e) **To perform such duties as are incident to his or her office or as are properly required of his or her by the Board of Trustees**."

Section 27 of the RCC provides that any director or trustee may be removed from office with or without cause by a vote of the stockholders holding or representing at least two-thirds (2/3) of the outstanding capital stock, or in a non-stock corporation, by a vote of at least two-thirds (2/3) of the members entitled to vote.

In the case of ***Raniel vs. Jochico,***[27] it was ruled that only stockholders or members have the power to remove the directors or trustees elected by them.

Lastly, we recommend that you secure the opinion of the Department of Education and the Commission on Higher Education (CHED) which have the primary jurisdiction over educational institutions since PWC Davao is under the regulatory authority of the said department and agency.

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

Please be guided accordingly.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[27] 517 SCRA 211 (2007)
[28] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.