Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

13 December 2023

SEC-OGC Opinion No. 23-17
Re: Perpetual Corporate Term

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Attention: **Atty. Leah Lumaniog-Sy**
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This refers to your letter dated 12 October 2023 requesting the Commission's opinion regarding the corporate term of corporations under the ***Republic Act (RA) No. 11232 or the Revised Corporation Code (RCC)***[1] vis-à-vis ***SEC Memorandum Circular No. 22, Series of 2020***[2], in particular, on the matter of the amendment of the Articles of Incorporation to reflect the perpetual corporate term.

In your letter, you mentioned that your client, Chamber of Cosmetics Industries of the Philippines (CCIP), was incorporated under ***Act No. 1459 or the Corporation Law***[3] on 23 February 1977. Its corporate existence is supposed to expire by 23 February 2027 under paragraph 4 thereof, which provides that the corporate term is "not exceeding fifty years except as hereinafter provided".

Relative to the foregoing, you are seeking confirmation from the Commission, of the following:

1. The corporate term of CCIP, a corporation incorporated under Act No. 1459, is already automatically extended to perpetuity upon the passage of the RCC;
2. An amendment of the Articles of Incorporation is merely optional on the part of CCIP; and
3. Due to the foregoing, CCIP's corporate term is deemed perpetual even if no such amendment is made.

With the passage of the RCC, corporations that were incorporated before the effective date of the said Code shall now have perpetual existence, to wit:

> "Section 11. ***Corporate Term***. – A corporation shall have perpetual existence unless its articles of incorporation provides otherwise.
>
> **Corporations with certificates of incorporation issued prior to the effectivity of this Code, and which continue to exist, shall have perpetual existence**, unless the corporation, upon a vote of its stockholders representing a majority of its outstanding capital stock, notifies the Commission that it elects to retain its specific corporate term pursuant to its articles of incorporation. ... xxx"

In this connection, Section 2 of ***SEC Memorandum Circular No. 22, Series of 2020*** provides:

> **"Section 2. Corporations Incorporated under B.P. No. 68 (Corporation Code of the Philippines) and Act No. 1459 (The Corporation Law)**

[1] Republic Act (RA) No. 11232, Revised Corporation Code,
[2] SEC Memorandum Circular No. 22, series of 2020, *Guidelines on Corporate Term.*
[3] Act No. 1459, The Corporation Law, 1 March 1906.

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a. **The corporate term of a corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continue to exist, shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation. The corporation, subject to payment of filing fees, may amend Article Four to reflect its perpetual corporate term in its Articles of Incorporation, by a vote of majority of its Board of Directors or Trustees and by a vote of its stockholders representing a majority of its outstanding capital stock including the non-voting shares, or a majority of the members, in case of a non-stock corporation.** Provided that, for all other provisions to be amended in one same amended articles of incorporation, the required vote should be vote of majority of its Board of Directors or Trustees and vote of its stockholders representing a two-thirds (2/3) of its outstanding capital stock or members, in case of a non-stock corporation."

Based on the afore-quoted provisions, corporations existing prior to, and which continue to exist after the effectivity of, the RCC are ***ipso jure granted perpetual existence without any further action*** on their part. Given this, the Articles of Incorporation of all corporations which satisfies the requirements under Section 11 of the RCC and MC 22, s. 2020 are ***deemed amended*** to the effect that their corporate term is now perpetual. A positive act on the part of the corporation is only required if it intends to limit their corporate term to a certain period.[4]

This is consistent with the previous Opinions[5] issued by this Commission regarding perpetual corporate term under the RCC.

Applying the foregoing to CCIP, the corporate term of CCIP is deemed perpetual by virtue of the passage of the RCC even if no amendment of the Articles of Incorporation is made. CCIP ***may***, however, **opt** to amend its Articles of Incorporation to reflect its perpetual corporate term in accordance with Section 2 of ***MC No. 22, s. 2020*** which requires the affirmative vote of the majority of the board of directors and the vote of stockholders representing at least majority of the outstanding capital stock, or a majority of the members, in case of a non-stock corporation.

Thus, we answer your queries in the affirmative.

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.[6] 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

[4] SEC-OGC Opinion No. 20-02, Corporate Term under the Corporate Code; 3 November 2020.
[5] SEC-OGC Opinion No. 19-47, Corporate Term of Existing Corporations under the Revised Corporation Code, 5 September 2019; SEC-OGC Opinion No. 19-28, Corporate Term of Existing Corporations under the Revised Corporation Code, 22 July 2019; SEC-OGC Opinion No. 19-16, Corporate Terms of Existing Corporations under Revised Corporation Code, 15 April 2019
[6] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.