Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 24-10
Re: Perpetual Term of Officers

25 April 2024

MEMBERS CHURCH OF GOD INTERNATIONAL (MCGI) INC.
ADD Convention Center
Brgy. Sampaloc, Apalit, Pampanga
info@mcgi.org

Attention: **Atty. Pablo B. Ajesta**
Legal Counsel

Dear Sir:

This refers to your letter[1] requesting the Commission's opinion on whether the Articles of Incorporation (AOI) or by-laws of Members Church of God International, Inc. (MCGI) may be amended to indicate a perpetual term of its key elders as officers, to wit:

> "Section 2. Term of Office of Officers – However, as duly moved and seconded, and voted upon unanimously as an exception to the rule, that the incumbent President and Vice-President, Bro. Eliseo F. Soriano and Bro. Daniel S. Razon, respectively **shall hold their offices during their lifetime**, and in the event of fully incapacity, death or total disability in whatever manner of Bro. Eliseo F. Soriano then Bro. Daniel S. Razon shall automatically assume the Office of the President, which he **shall hold permanently during his lifetime**, and that under the prevailing circumstances, and for purposes of expediency, shall have the discretion and authority to appoint immediately his successor to the Office of the Vice-President."

You mentioned that the MCGI is a religious organization and was registered with the Commission as a non-stock, non-profit organization.

You stated that your effort to amend the by-laws is to make the organizational structure more attuned to the present setting of MCGI where its key elders hold their position/office during their lifetime, unless and until they become physically and/or mentally incapacitated to further exercise the function of their office. Hence, this request.

Specifically, you wish clarification on the following:

1. Whether or not MCGI in its present set up can amend its by-laws or its AOI, for that matter, to indicate that its key elders shall maintain and hold [their] position/office permanently during their lifetime;
2. Whether or not MCGI, as a religious organization, could be exempt from the requirement of election of officers as provided under the [C]orporation [C]ode for non-stock, non-profit organization under the principle of separation of Church and State or the free exercise of religion as enshrined in the Constitution; and

[1] dated 11 March 2019

3. What are the possible organizational structures, aside from corporation sole, in order to effectively address these particular legal concerns of MCGI.

Term of Office of Corporate Officers

Relative to your first query, we answer in the negative.

In determining the qualifications of the corporate officers, reference must be made to the pertinent provisions of the law, and the corporation's by-laws.[2] However, while the term of trustees of non-stock corporations may vary under the by-laws, a provision therein which provides for a lifetime or unlimited term of the board of trustees is not allowable.[3]

Indefinite period of officers and other key personnel are generally invalid because they bind the hands of future board of directors.[4] . It has been a long standing policy of the Commission not to allow a provision in the AOI or by-laws providing for a life-time term of office of the corporate officers. This is precisely to avoid possible abuse of persons in power. Likewise, a life-time term of office absolutely deprives other members of the corporation of the opportunity to become officers of the corporation.[5]

This policy of the Commission not to allow perpetual term is well justified by Section 24 of the Revised Corporation Code (RCC), quoted hereunder, which provides that the officers shall be elected after the election of the Board.

> "Section 24. Corporate Officers. – Immediately after their election, the directors of a corporation must formally organize and elect: (a) a president, who must be a director; (b) a treasurer, who must be a resident; (c) a secretary, who must be a citizen and resident of the Philippines; and (d) such other officers as may be provided in the by-laws. If the corporation is vested with public interest, the board shall also elect a compliance officer. The same person may hold two (2) or more positions concurrently, except that no one shall act as president and secretary or as president and treasurer at the same time, unless otherwise allowed in this Code.
>
> The officers shall manage the corporation and perform such duties as may be provided in the by-laws and/or as resolved by the board of directors."

The election of the board of trustees precedes the election of corporate officers of the corporation.[6] Thus, it can be deduced from the above provision that the term of the officers cannot extend beyond that of the directors. The relationship existing between the corporation and its board of trustees, and the duly authorized corporate officers, is that of principal-agent, which is fiduciary in character, and essentially revocable;[7] hence, corporate officers serve at the pleasure of the Board.[8] Since the corporate officers are elected by the trustees, it necessarily follows that officers cannot have a perpetual or lifetime term while the trustees serve for a limited period as this deprives the succeeding board of its power to elect new officers of the corporation.

Under Section 4 Article II of the by-laws of MCGI, quoted hereunder, the Board of Trustees shall have a term of one (1) year.

> "Article II
> TRUSTEES
>
> xxx xxx xxx
>
> Section 4. Term of Office of Trustees – the trustees shall hold office for one year and until their successors are duly elected and qualified."

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[2] SEC-OGC Opinion No. 25-08, Corporate Officers Not Considered Employees, 6 November 2008.
[3] SEC Opinion No. 46-04, Term of Office of the Board of Trustees, 7 December 2004.
[4] SEC Opinion dated 16 December 1991, addressed to Ms. Celedonia M. Aquino.
[5] *Ibid.*
[6] SEC Opinion dated 5 August 1992, addressed to Mr. Pio O. Dizon.
[7] Villanueva, Cesar & Villanueva-Tiansay, Teresa S., *Philippine Corporate Law*, 2021, p. 441.
[8] *Ibid,* p. 403.

Accordingly, allowing the key elders of MCGI who are considered officers under its by-laws, to serve beyond the term of the Board of Trustees or for a life time term is contrary to the aforecited provisions of the RCC and by-laws, hence, not valid and binding and therefore, should not be countenanced.

Election of Officers

With regard to your second query, we answer in the negative.

MCGI is registered with the Commission as a non-stock, non-profit corporation and organized for religious purposes. Under Section 114 of the RCC, any religious society or religious order, or any diocese, synod, or district organization of any religious denomination, sect, or church, may, upon written consent and/or by an affirmative vote of two-thirds (2/3) of its membership, incorporate for administration of its temporalities or for the management of its affairs, properties and estate by filing its AOI with the Commission. The AOI, among others, shall set forth that "the religious society or religious order, or diocese, synod, or district organization **desires to incorporate** for the administration of its affairs, properties and estate." By submitting its AOI, the MCGI signifies its consent to be registered with the Commission and agrees to comply with all relevant laws, rules and regulations.

Section 107 of the RCC provides that religious corporations shall be governed by the general provisions on nonstock corporations insofar as applicable. Relative to this, Section 86 of the RCC provides that the provisions governing stock corporations, when pertinent shall be applicable to nonstock corporations. Hence, MCGI must comply with the requirement of election of officers under Section 24 and 25[9], pursuant to Section 86 and 107 of the RCC.

Religious Organizational Structures

As regards your third query about the possible organizational structures to effectively address the particular legal concerns of MCGI, please note that the Commission cannot render an opinion on requests that will entail gathering of legal materials for the requesting party since the Commission should not function nor resemble as legal counsel of private firms.[10]

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[9] Section 25, RCC. *Report of Election of Directors, Trustees and Officers, Non-holding of Election and Cessation from Office.* – Within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Commission, the names, nationalities, shareholdings, and residence addresses of the directors, trustees and officers elected.

The non-holding of elections and the reasons thereof shall be reported to the Commission within thirty (30) days from the date of the scheduled election. The report shall specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date.

If no new date has been designated, or if the rescheduled election is likewise not held, the Commission may, upon application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election, summarily order that an election be held. The Commission shall have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote.

Notwithstanding any provision of the articles of incorporation or by-laws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this section.

Should a director, trustee or officer die, resign or in any manner cease to hold office, the secretary, or the director, trustee or officer of the corporation, shall, within seven (7) days from knowledge thereof, report in writing such fact to the Commission.

[10] Section 5.10, SEC Memorandum Circular No. 15, series of 2003.

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.[11] If upon 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

[11] *Supra*, note 9.