Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

05 November 2024

SEC-OGC Opinion No. 24-31
Re: Board with Incomplete Number of Independent Directors

ASIA PACIFIC MEDICAL CENTER-ILOILO, INC.
Brgy. Ungka 1, Jaro
Iloilo City 5000

Attention: **Ms. Maylene B. Villanueva, CCO**
Corporate Secretary
Compliance Officer

Dear Ms. Villanueva:

This refers to your letter dated 29 October 2021 requesting the Commission's opinion regarding the incomplete number of independent directors in the Board of Directors (BOD) of Asia Pacific Medical Center-Iloilo, Inc. (APMC-II).

As stated in your letter, APMC-II is a stock corporation registered with the Commission to establish, maintain, operate, own, and manage hospitals, medical, and related healthcare facilities. **It was granted a secondary license to issue securities in December 2018.**

You also stated that per Agenda for the 26 August 2021 Annual Stockholders' Meeting (ASM), twelve (12) regular directors and three (3) independent directors are required to be elected to the board. A Definitive Information Statement (DIS) containing thirteen (13) regular director nominees and 3 independent director nominees was released to all stockholders on 05 August 2021. However, on 19 August 2021, one (1) regular director nominee and 1 independent director nominee withdrew their candidacies because they sold their shares. During the meeting/election on 26 August 2021, there were only 12 regular director candidates and two (2) candidates for independent directors. As the voting was held through an online portal and floor nomination is not allowed for the election of independent directors, only 12 directors and 2 independent directors were elected during the ASM.

Currently, APMC-II's newly-elected BOD is concentrating its efforts on expediting the completion and commencing the operation of its nine (9)-storey, two hundred (200)- bed capacity hospital, which was supposedly set to open in 2020, but whose construction met inevitable delays in the supply of goods, materials, and labor for the project caused by the COVID-19 pandemic. To remedy the matter, APMC-II's BOD and management propose the conduct of a special election for the purposes of electing the lacking 1 independent director in the BOD.

However, although a call for nomination of 1 independent director had been initiated, APMC-II's BOD is convinced that the holding of another ASM via remote communication would entail a lot of effort and resources; that is, setting up another online voting portal and webinar for its more than two thousand (2,000) stockholders and the filing of necessary reportorial requirements.

So as not to impede its preparations to complete the construction of the hospital, the Board is considering **filling up the vacancy by the election of at least the majority of the directors** from the

Qualified Nominees coming from stockholders and evaluated by the Nomination and Election Committee. It had just concluded its ASM after several postponements due to alternative work arrangements during the quarantine periods and does not want to be caught in the preparations for another stockholders' meeting.

In relation thereto, you are requesting the Commission's opinion on the following queries:

1. Whether APMC-II can be exempted from holding a special stockholders' meeting for the purpose of filling up the vacancy in APMC-II's BOD and just fill-up such vacancy by a majority vote of the BOD, considering the extraneous circumstance brought by the COVID-19 pandemic; and

2. If the answer to No. 1 is negative, whether AMPC-II can just wait for its next Annual Stockholders' Meeting, on the third (3rd) Sunday of April next year, to fill up the vacancy for 1 independent director?

Section 22 of the Revised Corporation Code (RCC)[1] provides:

> "The board of the following **corporations vested with public interest shall have independent directors** constituting at least twenty percent (20%) of such board: a) Corporations covered by Section 17.2 of Republic Act No. 8799, otherwise known as "The Securities Regulation Code", namely those **whose securities are registered with the Commission**, corporations listed with an exchange or with assets of at least Fifty million pesos (P50,000,000.00) and having two hundred (200) or more holders of shares, each holding at least one hundred (100) shares of a class of its equity shares xxx;
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> **Independent directors must be elected by the shareholders** present or entitled to vote in absentia during the election of directors. Independent directors shall be subject to rules and regulations governing their qualifications, disqualifications, voting requirements, duration of term and term limit, maximum number of board memberships and other requirements that the Commission will prescribe to strengthen their independence and align with international best practices."

Based on the afore-quoted provision, **we answer your first query in the negative.** The lacking 1 independent director in the BOD must be elected by the shareholders in a meeting called for that purpose since APMC-II is a registered issuer of securities.

As to your **second query**, it is already settled that having an independent director is one of the cornerstones of corporate governance (CG) principles which have attained the status of best practices in the corporate world and hence adopted in the law. Hence, Section 22 of the RCC and the CG rules of the Commission make it mandatory for covered companies to have independent directors in the prescribed number. Otherwise, these companies may be subject to certain administrative sanctions. Thus, **we answer your second query in the negative**.

It shall be understood, however, that the foregoing opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue raised therein. This opinion shall not be considered and 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[2]. If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C Padilla
General Counsel

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[1] Republic Act No.11232, 20 February 2019.
[2] SEC Memorandum Circular No. 15, Series of 2003, No.7.