



# Philippine Institute of Certified Public Accountants

THE ACCREDITED PROFESSIONAL ORGANIZATION OF CERTIFIED PUBLIC ACCOUNTANTS

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November 8<sup>th</sup> 2005

My fellow PICPA Members:

In connection with the November 26 Annual National Convention I wish to --

- (1) Clarify any confusion regarding the opinion of the SEC General Counsel recently issued to PICPA. The issue addressed by the SEC Opinion was the *venue* of the meetings of the PICPA members, and not the validity of the amendments to the PICPA ByLaws as may have been implied in the various email and text messages sent to PICPA members by the Honorable Froilan G. Ampil, a member of the Board of Accountancy;
- (2) Discuss a proposed amendment to the ByLaws which will be presented to the members for approval, in addition to the amendments required by Republic Act ("RA") No. 9298 (the Philippine Accountancy Act of 2004) and its Implementing Rules and Regulations ("IRR"); and
- (3) Clarify the allegedly controversial amendments to the PICPA ByLaws, and discuss certain proposed amendments as enumerated in the October 27, 2005 letter of the Honorable Froilan G. Ampil addressed to all Certified Public Accountants.

## **RECAP OF EVENTS**

The venue for the June 10, 2005 Special Membership Meeting ("June 10 Meeting"), ie, Cebu City, was approved by the PICPA Board of Directors during the Eleventh Regular Board Meeting held on November 24, 2004 in Cagayan De Oro City, and by the PICPA members during the 2004 Annual Business Meeting chaired in both instances by 2004 National President Pio D. Bacong, also held in Cagayan De Oro City.

During the June 10 Meeting itself, no objections were raised as to the venue. The majority of the PICPA members, present in person or by proxy, at the June 10 Meeting approved the amendments to the ByLaws required by the IRR of RA No. 9298. But the Honorable Froilan G. Ampil, in a letter dated July 25, 2005, protested some of these amendments, as well as the venue for the June 10 Meeting, noticeably some eight months after the venue was approved by the members and more than one month after the actual meeting took place.

As the proposed amendments in the June 10 Meeting are being undertaken in compliance with the new IRR, we went to the SEC to clarify the query of the Honorable Froilan G. Ampil regarding the venue of the meeting which was earlier set by the members in November 2004 and at which the proposed amendments were presented to the members for approval in June 10, 2005. After the SEC General Counsel released her opinion, and without waiting for the filing by PICPA of a motion for reconsideration and the final disposition of the matter by the Commission *en banc*, the Honorable Froilan G. Ampil circulated by email his letter advising all Certified Public Accountants that the June 10 Meeting had been found by the SEC "to be defective and thus all the amendments taken up and approved during the said meeting are null and void."

## DISCUSSION OF THE AMENDMENTS TO THE BYLAWS AND THE SEC OPINION

### 1. The Opinion of the SEC

Our letter to the SEC General Counsel was for the purpose of confirming: (1) the long-held PICPA position and practice that the meetings of its members could be held outside Metro Manila, where the principal office of PICPA is located and (2) the sufficiency of the provisions of the PICPA ByLaws (as they stand prior to the June 10 Meeting) on the venue of such meetings. It was our responsibility to write that letter to the SEC since the IRR mandates PICPA as the Accredited Professional Organization for CPAs to coordinate with the Board of Accountancy and the SEC "any amendment to its articles of incorporation and by-laws" [IRR, Annex A, paragraph 2(h)].

While PICPA has always treated Article XII of such ByLaws as referring to a determinable venue (ie, the venue of the meeting would be determined from the notice sent to the members), the SEC General Counsel found the language of Article XII to be silent on the venue, so that she opined that the meeting of the members should always be held at the city or municipality where the principal office of the corporation is located, pursuant to Section 93 in relation to Section 51 of the Corporation Code.

We pointed out to the SEC that the reason for the Corporation Code setting the venue for meetings as the place where the principal office of a corporation is located is to protect: (a) the interest of the public, that the corporation shall not transcend the powers granted; and (b) the interest of the stockholders, that the corporation's capital shall not be subjected to risks not contemplated by the corporate charter. **In the case of the meetings of the members of PICPA, a nonstock corporation, held outside Metro Manila, the interest of the public is not prejudiced nor are PICPA members disenfranchised.** In fact, the June 10 Meeting specifically allowed the most number of PICPA members to attend in person, since it was held at the venue where three other PICPA meetings were taking place, ie, (1) the PICPA Chapter Presidents' Meeting; (2) the Visayan Regional Conference; and (3) the Metro Manila Regional Conference.

While the SEC General Counsel opined that the PICPA ByLaws are silent on the matter of the venue of the members' meetings, the **SEC General Counsel did not state that all the**

**amendments taken up and approved during the meeting were null and void.** If the opinion contained such a statement, then the consequence is that all proceedings had and all businesses transacted during all prior meetings of PICPA members held outside Metro Manila as the APO for the last thirty years since October 1975 to date, are either voidable or void.

The SEC General Counsel noted that in the U.S., jurisprudence can be found allowing meetings of stockholders to take place outside the principal office of the corporation, especially in the case of nonstock nonprofit organizations, since no public policy is adversely affected by it. We have signified our intention to elevate the issue to the Commission *en banc* to align the application of the Corporation Code provisions with the rationale behind the rules on venue, and with the objectives of a national professional organization such as PICPA.

Holding members' meetings outside Metro Manila is not intended to disenfranchise any member; on the contrary, the intention is to **make our members in the provinces better appreciate that PICPA is a national, rather than a Metro Manila, organization.**

## **2. The proposed amendment of the ByLaws provision on venue**

While the SEC General Counsel's opinion is pending further study or reconsideration by the Commissioners acting *en banc*, the PICPA National Board of Directors have decided, in the singular intention of complying with the now prevailing legislation: (1) to present anew and to secure the members' approval for amendments to the By-Laws and the Articles of Incorporation as mandated by RA No. 9298 and its IRR, and (2) to secure, in addition to the foregoing, the amendment to Article XII of the ByLaws, so that the ByLaws would thereby specify, in clear and unequivocal terms, that the venue of the meeting shall be determined as follows: (1) by the general membership and the National Board of Directors of the year preceding the meeting, in the case of the general annual meeting of the PICPA members, and (2) by the party calling for a special meeting (ie, the President, the National Board of Directors, or the 400 members in good standing), in the case of a special meeting of the PICPA members.

The approval for this amendment to the ByLaws provision on venue should preclude any further entanglements which only serve to delay PICPA's efforts to comply with RA No. 9298 and its IRR.

## **3. The allegedly controversial amendments to the ByLaws**

### **a. Rotation of the Presidency.**

Annex A of the IRR (a) provides that the national directors shall be apportioned according to the sectors in the four geographic areas (eg, National Capital Region, Luzon, Visayas, and Mindanao) based on the ratio of the latest available number of members in good standing from those areas and (b) requires PICPA as the Accredited Professional Organization "to adopt rules and regulations to implement this distribution of its national directors including the rotation of its president by sectors in each of the regions." Thus, the amendments to the ByLaws presented to the members during the June 10 Meeting ("Proposed Amendments")

provide for a region and sector rotation, on an equal basis, in Article VIII Section 3 (in relation to Article XXIII Section 3) as follows:

Year	Region	Sector
2005	Metro Manila	Public Practice
Jan 1-June 30, 2006	Metro Manila	Public Practice
2006-2007	Visayas	Commerce & Industry
2007-2008	Luzon	Education
2008-2009	Mindanao	Government
2009-2010	Metro Manila	Commerce & Industry
2010-2011	Visayas	Education
2011-2012	Luzon	Government
2012-2013	Mindanao	Public Practice
2013-2014	Metro Manila	Education
2014-2015	Visayas	Government
2015-2016	Luzon	Public Practice
2016-2017	Mindanao	Commerce & Industry
2017-2018	Metro Manila	Government
2018-2019	Visayas	Public Practice
2019-2020	Luzon	Commerce & Industry
2020-2021	Mindanao	Education
2021-2022	MetroManila	Public Practice

The Proposed Amendments to be presented to the PICPA Members during the Annual National Convention on November 26, 2005 (“November 26 Meeting”) will provide for a transition period during which "the rotation for the office of the Presidency of PICPA shall only be based on the regional rotation **without regard for the sectoral rotation** [Article XXIII Section 3] (“Transition Period”). The Transition Period shall end on the last day of fiscal year 2010-2011. For the duration of the Transition Period, the rule in Article VIII Section 3 that the inability of the geographical area and the sector "to provide a candidate for President during its turn shall be construed as a waiver for the Presidency by the particular geographical area and sector" shall not apply.

The Honorable Froilan G. Ampil expresses apprehension that the presidency will be concentrated in Manila and Luzon because the other regions would have difficulty fielding candidates from the government and the academe when these sectors' turn arises. The reason he cites is that it is difficult for CPAs in the government and the academe to go on a leave of absence for three years (presumably, year 1 is when the Executive Vice President starts his term as a member of the National Board of Directors, year 2 is when he becomes President, and year 3 is when he heads the PICPA Foundation).

We disagree. The Transition Period, during which the sectoral qualification is not imposed, will give the various regions and sectors ample time to groom the appropriate candidate for President; as well, this period is aimed to strengthen both the regions and the sectors. The Proposed Amendments do not require the Executive Vice-President or the President to go on a three-year leave of absence from regular work. There will be a full-time Executive

Director who shall be appointed by the President, and who is primarily tasked to implement the policies promulgated by the National Board of Directors, serve as the administrative officer of PICPA, and ensure compliance with the requirements to maintain the status of PICPA as the Accredited Professional Organization [Article VIII Section 9]. The President and the Executive Vice President should be more concerned over policy matters, and not the execution of the day-to-day operations of PICPA. The Proposed Amendments specifically state that the President shall exercise general supervision over the officers, and shall ensure that the provisions of the ByLaws, the rules and regulations, and the resolutions of the National Board of Directors, are complied with [Article VIII Section 4], and that the Executive Vice President shall have executive supervisory control over the geographical area offices and the regional councils of PICPA [Article VIII Section 5].

While it was during the incumbency of a PICPA President from the government sector that PICPA incurred losses from its operations, nonetheless this singular instance should not serve as a bar to the Presidency for those in the government sector. This matter was resolved by a special independent board committee, and the results of the committee's evaluation were reflected accordingly in the financial statements of PICPA. Since then, PICPA has generated sufficient revenues and PICPA today is not in a loss or a deficiency position. The consolidation of the chapter or foundation revenues is not meant to cover up any financial loss incurred by the National Office but is a requirement of the IRR (see further related text below).

#### **b. Integration of the Chapters and their Foundations**

The Honorable Froilan G. Ampil suggests that the requirement to integrate the funds of the Chapters and their respective Foundations for reporting to the National Office is designed to "cover-up the fiscal inefficiencies of the National Office."

This is not true. This "integration" or "consolidation" is a requirement of Annex A, paragraph 2(f) of the IRR, which states that PICPA "shall be judicious and prudent in the management of its financial resources." For this purpose, each chapter/region/national office and their respective foundations "shall keep proper books of accounts and submit audited annual financial statements thereof" and "the national office shall consolidate these financial statements on an annual basis" for submission to the Board of Accountancy and the SEC in accordance with the applicable accounting procedures.

We wish to emphasize that it is the Board of Accountancy (of which the Honorable Froilan G. Ampil is a member) which was tasked to "prescribe and adopt the rules and regulations necessary for carrying out the provisions" of RA No. 9298, for which reason the IRR was issued and published. Rule IV Section 30 of the IRR specifically states makes Annex A an integral part thereof, and it is Annex A which mandates what the Honorable Froilan G. Ampil now considers as "controversial." It is Annex A which sets forth the rules and regulations covering the accreditation of an Accredited National Professional Organization of CPAs, the renewal of the Certificate of Accreditation, and its Suspension/Cancellation. The amendment of the PICPA ByLaws to conform to the requirements of Annex A and the IRR is therefore necessary to allow PICPA to continue as the Accredited Professional Organization recognized by the Professional Regulations Commission.

#### 4. The proposed amendments of the Mindanao CPAs

##### a. Chapter Membership determined by place of residence

The Honorable Froilan G. Ampil seeks to re-define the basis of chapter membership and confine the same to the place of residence of the CPA. We believe that the individual CPA should be free to determine where he or she would want to register, as only he or she is in a position to determine where and how he or she could best contribute to the organization. Thus, the ByLaws provide that a CPA shall be a member of the chapter of the province or city **where his residence or place of business is located** [Article V Section 7].

##### b. Metro Manila cities and municipalities as individual chapters

The Honorable Froilan G. Ampil also proposes to divide the Metro Manila region into as many chapters as there are cities and municipalities. This would result in a total of seventeen (17) chapters, which is a significant increase from the current four (4) chapters. Needless to say, this goes against the avowed objective of unifying the members of PICPA, as organizations are strengthened by aggregation and not by division. No useful purpose is served by forming seventeen (17) chapters holding separate meetings, when the members can just as easily align themselves with a markedly lesser number of chapters, since no city or municipality is so secluded from the business center or transportation network that meetings can only be attended by those living or working within a certain kilometer radius. On the contrary, Metro Manila venues are easily traversed by car or by the mass transport system.

##### c. PICPA Fiscal Year

The Honorable Froilan G. Ampil proposes a change of accounting year from the present calendar year to a fiscal year ending on June 30 of every year. This is already among the Proposed Amendments, which, absent any objection to the venue during the June 10 meeting, was approved by a majority of the members present thereat, in person or by proxy. Specifically Article XV Section 1 as amended would read, "the fiscal year of the Philippine Institute of Certified Public Accountants shall begin with the first day of July and shall end with the last day of June of the following fiscal year."

## CONCLUSION

In view of the foregoing, I would like to appeal to our members to attend the annual national convention, so that together we could take the crucial step that will propel PICPA, the premier Accredited Professional Organization, into its rightful role of steering the development of the profession.

In case you cannot attend in person, kindly execute the attached proxy form in flavor of any one of the following:

David L. Balangue,  
Francisco B. Gonzalez V, or  
Antonio V. Cruz

and send the same either: (1) by mail to the PICPA National Office (attention Ms Beth Paguio), PICPA Building, 700 Shaw Blvd, Mandaluyong City, or (2) by fax (attention Ms. Beth Paguio) to this number: (632) 723-6305.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Francisco B. Gonzalez V'. The signature is stylized and cursive, with the first name 'Francisco' being the most legible part.

Atty. Francisco "Kiko" B Gonzalez V  
Chair, Committee on the Implementation of  
the IRR