Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the matter of:

SEC Case No. 04-11-341

PETITION FOR DISSOLUTION OF CURCAS OIL PHILIPPINES, INC.

VICENTE BAS BERTIZ and NIDA INGUITO VASQUEZ,

Petitioners.

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DECISION

For consideration of the Commission *En Banc* is the *Petition for Dissolution of Curcas Oil Philippines, Inc.* ("***Petition***") filed by Vicente Bas Bertiz and Nida Inguito Vasquez ("***Petitioners***") on 20 April 2011.

Curcas Oil Philippines, Inc. ("***COPI***") is a domestic corporation duly organized and existing under Philippine laws with Company Registration No. CS201020316.[1] The primary purpose of COPI is to engage in the business of developing, producing, processing, marketing and selling of various products that are sourced from alternative and non-conventional sources of energy, including but not limited to jatropha plant oil and its byproducts.[2]

Petitioners, to support their prayer to dissolve COPI, allege, among others, that:

a. COPI in legal concept is overwhelmingly controlled and run by a foreigner or foreign controlled corporation owning or controlling at least sixty percent (60%) of the capital and subscribed stocks, while Petitioners as Filipino citizens hold only the rest of forty percent (40%)[3], a wanton violation of Section 2, Article XII[4] of the Philippine Constitution;[5]

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[1] Petition for Dissolution of Curcas Oil Philippines, Inc., Annex "**A**".
[2] Id., Annex "**B**".
[3] Id., paragraph 11(a).
[4] Article XII, Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-

b. Since the inception of the business operation in 2010, Mr. Kurt Ernst Stuessi, a Swiss National, has been running COPI practically by himself acting as its President and Treasurer without consulting the Petitioners and other corporate officers on company policy direction and financial matters;[6]

c. There is continued mishandling of the management of corporate affairs and operations of COPI by Mr. Stuessi, there being no project and financial advisory report submitted by the latter to the Board for plenary discussion;[7]

d. Mr. Stuessi and his dummies, Dennis D. Judan and Ryan Jan G. Cruz, removed Petitioners from the Board of Directors and substituted Mr. Melvin Villa and Joysha Magmanlac in their stead without valid election of officers;[8] and

e. COPI is a close corporation without public subscription and therefore under the concept pertinent thereto, minority stockholder or shareholders may demand its dissolution if they cannot obtain redress and protection of their rights within the corporation.[9]

On 19 May 2011, Summons was issued and duly served upon COPI, Kurt Ernst Stuessi, Melvin Villa, and Joysha Magmanlac ("***Respondents***") on 23 May 2011.

However, on 16 June 2011, a *Manifestation and Motion*, dated 01 June 2011, was filed by Petitioners praying, among others, that judgment on the pleadings be rendered in view of the failure of the Respondents to file their *Answer* and serve a copy thereof to the Petitioners within fifteen (15) days after service of Summons.

On 30 June 2011, Respondents filed their *Answer*, dated 28 June 2011, essentially denying Petitioners' material allegations in their Petition.

On 17 August 2011, Petitioners filed their *Opposition to the Admission of the Answer filed by the Respondents.*

We now resolve the present Petition.

Section 105 of the Corporation Code of the Philippines provides that any stockholder of a close corporation may, by written petition to the Securities and Exchange Commission, compel the dissolution of such corporation whenever any acts of the directors, officers or those in control of the corporation is illegal, or fraudulent, or

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five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant. xxx

[5] Note 1, paragraph 5.

[6] Id., paragraph 6.

[7] Id., paragraph 7.

[8] Id., paragraph 8.

[9] Id., paragraph 11(d), citing Financing Corporation of the Philippines vs. Teodoro, 93 Phil. 678.

dishonest, or oppressive or unfairly prejudicial to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted.

In relation thereto, Section 96 of the Corporation Code defines a close corporation as one whose articles of incorporation provide that: (1) All the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) all the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class.

However, a perusal of COPI's Articles of Incorporation[10] shows that it does not provide for any of the foregoing. Hence, COPI is not a close corporation and Petitioners cannot ask for COPI's dissolution based on the alleged mismanagement and oppressive acts of the Respondents.

Under the Corporation Code, a regular corporation, as opposed to a close corporation, may be dissolved voluntarily or involuntarily.[11] The procedure and requirements for voluntary dissolution are provided under Sections 118[12] and 119[13] of

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[10] Note 2.

[11] Section 117, Batas Pambansa Blg. 68 also known as the Corporation Code of the Philippines.

[12] Section 118. Voluntary dissolution where no creditors are affected. – If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members of a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, after sending such notice to each stockholder or member either by registered mail or by personal delivery at least thirty (30) days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities and Exchange Commission shall thereupon issue the certificate of dissolution.

[13] Section 119. Voluntary dissolution where creditors are affected. – Where the dissolution of a corporation may prejudice the rights of any creditor, the petition for dissolution shall be filed with the Securities and Exchange Commission. The petition shall be signed by a majority of its board of directors or trustees or other officers having the management of its affairs, verified by its president or secretary or one of its directors or trustees, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by the affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members at a meeting of its stockholders or members called for that purpose.

If the petition is sufficient in form and substance, the Commission shall, by an order reciting the purpose of the petition, fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) days nor more than sixty (60) days after the entry of the order. Before such date, a copy of the order shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation published in the municipality or city where the principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

Upon five (5) day's notice, given after the date on which the right to file objections as fixed in the order has expired, the Commission shall proceed to hear the petition and try any issue made by the objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall the said Code. Involuntary dissolution, on the other hand, may be effected by filing a verified complaint with the Commission on the grounds provided by existing laws, rules and regulations.[14] An examination of the Petition and its annexes shows that it is one for involuntary dissolution, *i.e.*, the alleged violation of Section 2, Article XII[15] of the Philippine Constitution.

A review of the latest Financial Statement (FS) and General Information Sheet (GIS) filed by COPI with the Commission reveals that COPI has an outstanding capital stock of 2,500,000 shares with par value of P1.00 each[16] and that these 2,500,000 shares are now owned by Filipino citizens,[17] to wit:

NAME	NATIONALITY	TYPE	NUMBER	AMOUNT	AMOUNT PAID
VICENTE BAS BERTIZ	FILIPINO	COMMON	1,500,000	P1,500,000.00	P1,500,000.00
NIDA INGUITO VASQUEZ	FILIPINO	COMMON	995,000	P995,000.00	P995,000.00
QUHINNG ONEELE I. VASQUEZ	FILIPINO	COMMON	1,000	P1,000.00	P1,000.00
BEN A. ALFORNON	FILIPINO	COMMON	1,000	P1,000.00	P1,000.00
RAMIL LACABA	FILIPINO	COMMON	1,000	P1,000.00	P1,000.00
DENNIS D. JUDAN	FILIPINO	COMMON	1,000	P1,000.00	P1,000.00
RYAN JAN G. CRUZ	FILIPINO	COMMON	1,000	P1,000.00	P1,000.00
TOTAL AMOUNT OF SUBSCRIBED CAPITAL				P2,500,000.00	P2,500,000.00

render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation

[14] Section 121, Batas Pambansa Blg. 68 also known as the Corporation Code of the Philippines.

[15] Note 4.

[16] 2011 Financial Statement of Curcas Oil Philippines, Inc.

[17] General Information Sheet for the year 2013.

It must be noted that the said GIS is notarized. Well-settled is the rule that notarized documents enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong, and convincing as to exclude all controversy as to falsity.[18]

In view of the foregoing, any issue related to the alleged wanton violation of Section 2, Article XII of the Philippine Constitution has become moot and academic. In *Osmeña III vs. Social Security System of the Philippines,*[19] the Supreme Court defined a moot and academic case or issue as follows:

> "A case or issue is considered moot and academic when it **ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use**. In such instance, **there is no actual substantial relief which a petitioner would be entitled to**, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review."[20]

WHEREFORE, premises considered, the instant *Petition for Dissolution* is hereby **DISMISSED** for being moot and academic.

SO ORDERED.

Pasay City, Philippines, 08 December 2016.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

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[18]Adelaida Meneses (deceased), substituted by her heir Marilyn M. Carbonel-Garcia vs. Rosario G. Venturozo, G.R. No. 172196, October 19, 2011, citing *Dizon v. Tuazon*, G.R. No. 172167, July 9, 2008, 557 SCRA 487, 494.

[19] G.R. No. 165272, 13 September 2007, citing *Province of Batangas v. Romulo*, G.R. No. 152774, 27 May 2004, *Olanolan v. Comelec*, G.R. No. 165491, 31 March 2005, *Paloma v. CA*, G.R. No. 145431 11 November 2003.

[20] Emphasis and underscoring supplied.