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

Office of the General Counsel

26 August 2014

SEC-OGC Opinion No. 14-23
Re: Close Corporations; Powers of the President; Right of Inspection

A & M REALTY AND DEVELOPMENT CORPORATION
A & M Building
1572 Rizal Avenue
Sta. Cruz, Manila

Attention: Ms. Maria Lourdes Lorenzo

Madam:

This refers to your letter dated 1 December 2011, in connection with queries about close corporations, the powers of a corporation's president, and a stockholder's right of inspection of corporate records.

You posed very particular questions about the operations of a close corporation, enumerated as follows:

1. What is the nature of a "family corporation" and/or a "close corporation?"
2. Regarding the power of the President, is he or she allowed to decide on matters like needed renovations, major or minor, of a property/building without the approval of the Board and have it ratified in the next meeting?
3. Is there a limit as to the amount of money that a President can approve without passing it for the approval of the Board?
4. Is the corporation obliged to send the contract and receipts of each tenant/lessee of the corporation to a Director or stockholder of the company who is overseas?

Proceeding from your first query, a close corporation within the meaning of the Corporation Code ("Code")[1] is one where the articles of incorporation provide that: (1) all the corporation's issued stocks 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 of the issued stocks of all classes shall be subject to restrictions on transfer permitted by the Code;[2] and (3) the corporation shall not list in any stock exchange or make any public offering of any of its stock of any class.[3]

---

[1] Batas Pambansa Blg. 68 (1980).
[2] Under Section 98 of the Code, the restrictions shall not be more onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein.
[3] B.P. Blg. 68, Section 96.

The main difference between a close corporation and other corporations is the identity of stock ownership and active management, that is, all or most of the stockholders of a close corporation are active in the corporate business either as directors, officers or other key men in management. Where business associates belong to a small, closely-knit group, they usually prefer to keep the organization exclusive and would not welcome strangers. Since it is through their efforts and managerial skill that they expect the business to grow and prosper, it is quite understandable why they would not trust outsiders to come in and interfere with their management of the business, and much less share whatever fortune, big or small, that the business may bring.[4]

Under Section 97 of the Code, the articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. This agreement that the stockholders shall exercise the corporate powers in lieu of the board of directors likewise distinguishes a close corporation from an ordinary corporation, which is mandated to be managed and controlled by a board of directors under Section 23[5] of the Code.

On the second query, regard must be had to the fact that presidents of corporations are often given general supervision and control of the business as chief executive officers from which is to be inferred that contracts or acts made or done by the President in the ordinary course of business are presumed to be duly authorized unless the contrary appears.[6] Unless there is a charter or by-law provision to the contrary, the President may, as a general rule, bind the corporation on a contract in the ordinary course of business, provided that the same is reasonable under the circumstances.[7]

Moreover, ratification by a corporation, through the board of directors or trustees, of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority; and that the corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time.[8]

Further, <u>in case of close corporations</u>, Section 101 of the Code provides that—

> "Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if:

---

[4] SEC Opinion dated 7 February 1994, addressed to Mr. Jose M. Millarez, citing Comments, Notes and Selected Cases on Corporation Code by Campos and Lopez-Campos

[5] Section 23. *The board of directors or trustees.* – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. x x x

[6] De Leon, The Corporation Code of the Philippines Annotated (2006), p. 261, citing 2 Fletcher, p. 443.

[7] Prime White Cement Corp. vs. Intermediate Appellate Court, G.R. No. L-68555, 19 March 1993.

[8] The Board of Liquidators vs. Heirs of Kalaw, G.R. No. L-18805, 14 August 1967.

1. Before or after such action is taken, written consent thereto is signed by all the directors; or
2. All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or
3. The directors are accustomed to take informal action with the express or implied acquiescence of all the stockholders; or
4. All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing.

x x x."

Based on the foregoing, we answer the second query in the affirmative. In an ordinary corporation, the President's power of general control and supervision over the corporate business grants him an apparent and/or implied authority to enter into transactions on behalf of the corporation in the ordinary course of business, unless prohibited by the Articles of Incorporation or the By-Laws. The acts, even if priorly unauthorized, may be later ratified by the Board of Directors or Trustees, which ratification cleanses the transaction of its defects. In the case of close corporations, the act of the President, who is also a Director,[9] may not need later ratification of the Board of Directors or Trustees, provided that any of the conditions enumerated in Section 101 of the Code is present.

As to the third and fourth query, we refrain from rendering an opinion thereto. The third query involves the exercise of business judgment which the Commission does not interfere with. The fourth query may involve peculiar requirements of a Director or Stockholder of a close corporation, which are likewise not interfered with by the Commission.

Lastly, on the matter of the change of the principal office address of A&M Realty Development Corporation, please be advised that to legally effect the change of principal office, it is necessary that the change in address be reflected at least in the company's General Information Sheet, or, when necessary, that the Articles of Incorporation be amended for the purpose. Details of this requirement are laid down in SEC Memorandum Circular No. 16, Series of 2014.[10]

Under the Memorandum Circular, in the event that a corporation whose principal office address is already specific and complete has moved or moves to another location within the same city or municipality, the corporation is not required to file an amended articles of incorporation, but must declare in its new or current address in its General Information Sheet within fifteen (15) days from transfer to its new location or the effectivity of the Circular. In issuing the Memorandum Circular, the Commission intended to ease the burden on the part of affected corporations and partnerships in effecting an amendment of their articles of incorporation whenever they transfer or move to a new location.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and 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. If, upon further

---

[9] Section 25, Corporation Code.
[10] Dated 13 August 2014.

inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[11]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[11] SEC Memorandum Cricular No. 15, Series of 2003.