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

SEC-OGC Opinion No. 14-02
21 February 2014
**Re: Trustee in Liquidation**

**Atty. Vicente G. Gregorio**
*Counsel for* **BORDEN CHEMICAL PHILIPPINES, INC.**
Pelaez Gregorio Gregorio & Lim
Padilla Building, F. Ortigas Jr. Road, Ortigas Center,
1605 Pasig City, Metro Manila

Dear Sir;

This refers to your letter of 04 July 2013 requesting for an opinion on whether a former director and corporate secretary of a corporation or the counsel that represented the corporation in court can act as trustee even after the expiration of the three-year winding-up period for the final liquidation of the dissolved corporation.

The facts as presented in your request are as follows:

1. Borden Chemical Philippines, Inc. (BCPI), a corporation registered with the Commission, was dissolved through an amendment in its Articles of Incorporation shortening and terminating its corporate life on 12 February 2008.

2. The SEC issued the Certificate of Dissolution of BCPI on 08 September 2009.

3. At the time of BCPI's dissolution, BCPI had time deposit accounts with Prudential Bank [now the Bank of the Philippine Islands (BPI)] covered by Certificates of Deposit Nos. 698936 and 701102.

4. The above-mentioned Certificates of Deposit were assigned in favor of Empire Insurance Company (EI) to serve as security for surety bonds issued by the latter to guarantee the monetary claims of Mr. Jose Rizalino C. Nocon in the labor case he filed with the National Labor Relations Commission (NLRC) against BCPI.

5. The NLRC issued an *Order* dated 25 February 2013, more than three (3) years after BCPI's dissolution, ordering the release and cancellation of the surety bonds issued by EI in view of the execution of a Deed of Release and Waiver of Claims executed by Mr. Nocon in favor of BCPI.

6. EI, thereafter, surrendered the Certificates of Deposit securing the cancelled surety bonds to BCPI's representative, the requestor, Atty. Vicente G. Gregorio, who is a former Director and Corporate Secretary of BCPI at the time the SEC issued the Certificate of Dissolution.

7. BPI, as the depositary bank, has stated that it will issue a Manager's Check in favor of BCPI for the entire amount covered by the said Certificates, with accumulated interests.

Previously, the Commission has opined that:

> "While Section 122 of the Corporation Code gives a dissolved corporation three (3) years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period..."[1]

Thus, we reiterate that a dissolved corporation can go beyond the three-year period provided in Section 122 of the Corporation Code to complete its liquidation and to fully dispose of the corporation's remaining assets.

In the present case, BCPI still has remaining assets which must be disposed of, namely, the time deposit accounts with BPI which were originally deposited in the said bank by BCPI.

As regards the individuals who can act as trustees in relation to a corporation's liquidation, the Supreme Court in the case of *Clemente, et al. v. CA*[2] and as quoted in SEC-OGC Opinion No. 06-10,[3] stated that:

> **"If the three-year extended life has expired without a trustee or receiver** having been expressly designated by the corporation within that period, **the board of directors (or trustees) itself**, following the rationale of the Supreme Court's decision in Gelano vs. Court of Appeals (103 SCRA 90) **may be permitted to continue as "trustees" by legal implication to complete the corporate liquidation.** (emphasis ours) xxx
>
> In our jurisdiction, the statutes and jurisprudence are silent regarding the consequences of the death of a director, acting as trustee in liquidation, during the liquidation or winding up period. In some American jurisdictions, directors who become trustees of the corporation on dissolution hold on as joint tenants with right of survivorship incident to their tenancy. In other words, **when one or more directors die, the surviving trustees take the whole title subject to the trust, and the latter may exercise the powers and duties of the deceased director-trustee. However, it is also provided that in case of the death, resignation, inability or refusal to act, of the directors as trustees, or the survivors, the court may appoint trustees to fill the vacancy, upon the application of any person interested.**

[1] SEC Opinion No. 23-05 dated 23 December 2005 issued to Ms. Stella Marts R. Pelino; SEC-OGC Opinion No. 09-31 dated 09 December 2009 addressed to Ms. Liza G. Bautista.
[2] G.R. No. 82407, 27 March 1995.
[3] SEC-OGC Opinion No. 06-10 dated 29 January 2010 issued to Atty. Wilfredo M. Chato.

SEC-OGC

> Adopting these legal principles from American corporation law, from which our corporation law was patterned, we opine that Mr. Victor U. Lopez may act as trustee in liquidation. However, this is without prejudice to the right of a person in interest to petition the courts for the appointment of a different trustee in liquidation on account of Mr. Victor U. Lopez's refusal or inability to wind up the affairs of the dissolved corporation within a reasonable period."

Further, in *Gelano v. CA*[4], the Supreme Court, in relation to a corporation embroiled in a court case which has not been terminated even after the three-year winding-up period had lapsed, held that:

> "Although private respondent did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only."

Hence, applying these to the circumstances at hand, the counsel of the dissolved corporation during the labor case before the NLRC in which the surety bond was executed, in this case, Atty. Bienvenido J. Medel[5], can be considered as a trustee of the corporation as to matters connected with the said labor case.

From the foregoing, there is ample jurisprudence to support the opinion that BCPI's former Director and Corporate Secretary at the time the Certificate of Dissolution was issued, currently the only director that can be located, or the counsel that represented the corporation in the NLRC case can act as a trustee-in-liquidation of the corporation.

However, as to which one of them may properly assume as trustee to continue liquidation of the dissolved corporation, the Commission refrains from making a pronouncement.

Kindly note that Section 122 of the Corporation Code which governs corporate liquidation does not require SEC approval for the distribution of the remaining assets of a dissolved corporation. The liquidation process is an internal concern of the corporation and falls within the power of the directors and stockholders to determine[6].

Further, in the case of Consuelo Metal Corporation vs. Planters Development Bank (G.R. No. 152580, 26 June 2008), the Supreme Court stated that:

> "However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of the corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts."

---

[4] G.R. No. L-39050, 24 February 1981.
[5] Letter-Request dated 04 July 2013, p. 7.
[6] SEC Opinion dated February 14, 1995 addressed to Atty. Antonio M. Albano.

At this point, it may be prudent to exert all effort to notify the members of the board of directors of BCPI at the time of the corporation's dissolution in order to convene and discuss the liquidation of the time deposits that are still with BPI. If no other board members are located, then the last director at the time of dissolution or the counsel who represented the corporation in the labor case may act as trustees.

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.[7] If, upon further inquiry and 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,

**CAMILO S. CORREA**
*General Counsel*

[7] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.