Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-08
Re: Liquidation Beyond The Three (3) Year Winding Up Period

18 April 2024

THE MERCHANT'S HOTEL CORPORATION
8th Floor STI Holdings Center, 6764 Ayala Avenue
Makati City
merchanthotel@yahoo.com

Attention: Ms. Rina Pauline T. Abadiano

Dear Ms. Abadiano:

This pertains to your letter dated 23 February 2024[1] requesting for an opinion on the liquidation and winding up of The Merchant's Hotel Corporation ("TMHC").

You stated that TMHC was incorporated on 2 June 1966 with a corporate term of fifty (50) years. TMHC ceased its operations in 2009 and did not file for the extension of its corporate term, hence the same ended on 2 June 2016. Two (2) of its five (5) directors are deceased and the vacancies resulting from their passing were not filled up. TMHC has not commenced the liquidation and winding up of its affairs despite the lapse of its charter almost eight (8) years ago.

You raised the following queries:

1. Since the corporate term of TMHC has expired, is it necessary for it to request for a Certificate of Dissolution from the Commission?
2. To simplify TMHC's liquidation, may only one of the three (3) remaining directors take charge of winding up its affairs? If yes, does he/she need to be authorized by the other two through a Special Power of Attorney? If not, where will he/she derive his/her authority from?
3. In liquidating its assets, may TMHC use the alternative method of assigning the property of the corporation to a "*trustee*" by legal implication considering that no such trustee was appointed during the three-year period provided in Section 139 of the Revised Corporation Code? If yes, must the 3 remaining directors execute a Deed of Assignment or other conveyance document in favor of the trustees?
4. If a document needs to be signed by any one or all of the remaining directors, how will TMHC be described in the identification of parties? Is the description below acceptable?

> *"THE MERCHANTS' HOTEL CORPORATION, a corporation which is currently in the process of liquidating its assets and winding up its affairs, with address at (*),*

[1] Received by this Office on 26 February 2024.

represented herein by the Trustee-in- Liquidation and Director, (*) hereinafter to as "TMHC".

Section 139 of the Revised Corporation Code of the Philippines ("RCCP") provides:

> "SEC. 139. Corporate Liquidation. – Except for banks, which shall be covered by the applicable provisions of Republic Act No. 7653, otherwise known as the "New Central Bank Act", as amended, and Republic Act No. 3591, otherwise known as the Philippine Deposit Insurance Corporation Charter, as amended, **every corporation whose charter expires pursuant to its articles of incorporation, is annulled by forfeiture, or whose corporate existence is terminated in any other manner, shall nevertheless remain as a body corporate for three (3) years after the effective date of dissolution,** for the purpose of prosecuting and defending suits by or against it and **enabling it to settle and close its affairs, dispose of and convey its property, and distribute its assets, but not for the purpose of continuing the business for which it was established.**
>
> At any time during said three (3) years, **the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors and other persons in interest. After any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons-in-interest.**
>
> Except as otherwise provided for in Sections 93 and 94 of this Code, upon the winding up of corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated in favor of the national government.
>
> Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities." (Emphasis supplied)

A corporation whose registration expires or is revoked may continue as a body corporate for a limited period of three (3) years from the effective date of its dissolution considering that Section 139 of the RCCP specifically applies to corporations "***whose corporate existence is terminated in any other manner***." However, this limited corporate existence is limited only for the following purposes:

a) Prosecuting and defending suits by or against it and enabling it to settle and close its affairs;
b) Disposing of and conveying its property; and
c) Distributing its assets.[2]

As to your first query, we answer the same in the negative. Once a corporation's term has expired, the said corporate entity ceases to exist **except** insofar as its liquidation or winding down of its business affairs and the settlement of the claim of its creditors is concerned.

The Commission previously stated in an opinion, thus:

> "It is clear from the foregoing provision that **upon the expiration of the corporate term, the corporation ceases to exist and dissolved *ipso facto*. Hence, it can no longer continue the business or purposes for which it was organized.** However, it may be continued as a corporate body for 3 years only for purposes of winding up and liquidation. Thus, while the corporation is automatically dissolved after the expiration of its term, nevertheless it may be continued after the time when it would have been dissolved for the purposes of enabling it to settle and close its affairs. Accordingly, it may hold an election but only for winding up and liquidation purposes, *e.g.* for the purpose of prosecuting and defending suits by or against the corporation to enable it to settle and close its affairs."[3] (Emphasis supplied)

As to your second query, after the expiration of the three (3) year winding up period without a trustee or receiver being appointed, the **board of directors, as the controlling body of the corporation, by legal implication**, acts as trustees to take charge of the liquidation.

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[2] SEC-OGC Opinion No. 23-06 addressed to Atty. Jonathan Bagadiong dated 27 March 2023.
[3] SEC OGC opinion dated 12 April 1993 addressed to Mr. Juvencio L. Ocampo.

The Supreme Court in the case of ***Clemente v. Court of Appeals,***[4] held 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 so continue as "trustees" by legal implication to complete the corporate liquidation**. Still **in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation**, acting for and in its behalf, might make proper representations with the Securities and Exchange commission, which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns." (Emphasis and underscoring supplied)

In a previous opinion, the Commission opined that **if the Board of Directors or quorum thereof can still be convened**, then they should take care of the winding up of the corporation without the need for any proceeding.[5]

As to your third query, we answer the same in the negative. Under Section 139 of the RCCP,[6] the conveyance to the trustee of the corporate assets for purposes of liquidation **must be made within three (3) years** from the effective date of dissolution.

The Supreme Court has held that:

> "It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only (Corp. Law, Sec. 78 now Sec. 122[7]]) that **the conveyance to the trustees must be made within the three-year period**. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued (7 R.C.L., Corps., par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such in all matters connected with the liquidation." [8](Emphasis and underscoring supplied)

As to your fourth query and the next steps to be undertaken by the board of directors in designating a trustee, (e.g. *Special Power of Attorney and Deed of Assignment*), please be informed that as a matter of policy, the Commission refrains from rendering opinions on matters which will entail gathering of legal materials or writing abstract essay for the requesting party since the Commission should not function or resemble as legal counsel of private firms.[9]

However, for purposes of information only, we impart the following:

In ***Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio***[10], the Supreme Court interpreted the three-year period under Section 122 of the Corporation Code, now Section 139 of the RCCP, vis-à-vis the corporation's capacity to sue, *viz.:*

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[4] 242 SCRA 717 (1995)
[5] SEC OGC Opinion No. 14-22 dated 8 August 2014 addressed to Manuel T. Hing citing SEC-OGC Opinion No. 07-02 dated 15 February 2007 addreessed to Atty. Eliseo A. Fernandez.
[6] "SEC. 139. Corporate Liquidation-

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At any time during said three (3) years, **the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors and other persons in interest**. After any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons-in-interest."
[7] Now Section 139 of the RCCP.
[8] Reburiano v. Court of Appeals, 361 Phil. 294, 307 (1999), citing Sumera v. Valencia, 67 Phil. 721, 726 (1939)
[9] Section 5.10, SEC Memorandum Circular No. 15-03 dated 16 December 2003.
[10] G.R. No. 187456, 02 June 2014.

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It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued ***as a corporation*** is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued; but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such ***in all matters connected with the liquidation***.

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In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26, 2003. Based on the above-quoted provision of law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation.

It is likewise not disputed that the subject complaint was ***filed by petitioner corporation and not by its directors or trustees***. In fact, it ***is even averred, albeit wrongly***, in the first paragraph of the Complaint ***that "[p]laintiff is a duly organized and existing corporation under the laws of the Philippines, with capacity to sue and be sued. ..."***

Petitioner, nonetheless, insists that a corporation may still sue, even after it has been dissolved and the three-year liquidation period provided under Section 122 of the Corporation Code has passed. Petitioner cites the cases of *Gelano v. Court of Appeals*, Knecht *v. United Cigarette Corporation*, and *Pepsi-Cola Products Philippines, Inc. v. Court of Appeals*, as authority to support its position. The Court, however, agrees with the CA that in the above-cited cases, the corporations involved filed their respective complaints while they were still in existence. In other words, they already had pending actions at the time that their corporate existence was terminated.

The import of this Court's ruling in the cases cited by petitioner is that the trustee of a corporation may ***continue to prosecute*** a case commenced by the corporation within three years from its dissolution until rendition of the final judgment, even if such judgment is rendered beyond the three-year period allowed by Section 122 of the Corporation Code. However, ***there is nothing in the said cases which allows an already defunct corporation to initiate a suit after the lapse of the said three-year period***. On the contrary, the factual circumstances in the above-cited cases would show that the corporations involved therein ***did not initiate any complaint after the lapse of the three-year period***. In fact, as stated above, the actions were already pending at the time that they lost their corporate existence.

In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner ***lacks the capacity to sue as a corporation***. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code [now Section 139, RCCP].[11] (Emphasis and underscoring supplied)

Additionally, in ***Reyes and Pastor vs. Bancom Development Corporation,***[12] the Supreme Court discussed liquidation, to wit:

"Section 122 of the Corporation Code[13] provides that a corporation whose charter is annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs.

Based on the provision, *a defunct corporation loses the right to sue and be sued **in its name** upon the expiration of the three-year period provided by law*. Jurisprudence, however, has carved out an exception to this rule. In several cases, this Court has ruled that an appointed receiver, an assignee, or a trustee may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period. xxx

In subsequent cases, the Court further clarified that a receiver or an assignee need not even be appointed for the purpose of bringing suits or continuing those that are pending. In *Gelano v. Court of Appeals*, we declared that in the absence of a receiver or an assignee, suits may be instituted or continued by a trustee specifically designated for a particular matter, such as a lawyer representing the corporation in a certain case. We also ruled in *Clemente v. Court of Appeals* that the board of directors of the corporation may be considered trustees by legal implication for the purpose of winding up its affairs." xxx (Emphasis and underscoring)

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[11] *Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio, supra.*
[12] *Ramon Reyes and Clara Pastor vs. Bancom Development Corporation*, G.R. No. 190286, 11 January 2018.
[13] Supra note 7.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances, and documents disclosed/submitted and relevant solely to the particular issue raised therein. It 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.[14] 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

[14] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.

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