10 May 2022

SEC-OGC Opinion No. 22-06
Re: Liquidation

NONATO NONATO NONATO-LUCIANO
& LUCIANO LAW OFFICES
4TH Floor, Tulips Center, A.S. Fortuna St.,
Bakilid, Mandaue City, Cebu

Attention: Atty. Mark Christian Luciano

Gentlemen:

This refers to your letter[1] requesting for opinion on various issues on the liquidation of the lone asset of Ngo Lok Foundry, Inc. ("NLFI"), whose corporate charter was revoked by the Commission.

You stated in your letter that NLFI was incorporated on 22 February 1980 for the purpose of maintaining and operating a general machine shop and foundry. On 11 August 2003, the Commission revoked the corporate charter of the NLFI for failure to comply with its reportorial requirements. You also stated that NLFI does not have any creditor and its lone asset is a parcel of land. Out of the nine (9) directors of NLFI, only six (6) are still living. You would like to know whether:

1) NLFI may still liquidate and dispose its lone asset despite the lapse of more than three (3) years since the revocation of its corporate charter;
2) The Board of Directors of NLFI, or persons appointed by the Board in a duly constituted meeting, may act as trustees by implication and liquidate the lone asset of NLFI;
3) The presence of five (5) of the six (6) living directors of NLFI is sufficient to form a quorum in a meeting convened for the purpose of liquidating the lone asset of NLFI; and
4) The vote of majority of directors in a meeting with quorum is sufficient to settle all matters involving the liquidation of the lone asset of NLFI.

Section 139 of the Revised Corporation Code[2] ("RCC"), formerly Section 122 of the old Corporation Code[3], 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

[1] Dated 15 May 2018
[2] Republic Act No. 11232, Revised Corporation Code of the Philippines, 20 February 2019
[3] Batas Pambansa Blg. 68, The Corporation Code of the Philippines, 1 May 1980

> 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. x x x" (Emphasis Ours)

While Section 139 of the RCC 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.[4] We previously opined[5], to wit:

> "Section 122[6] simply means that after the expiration of the three-year winding-up period, pending actions by or against the dissolved corporation are abated. Section 122 should not, however, be construed to prevent a corporation from pursuing activities which would complete the final liquidation of a dissolved corporation. In this case, Northern Luzon Corporation Inc. which term has long expired, was unable to dispose of its remaining assets even during the three-year period granted it by Section 122. Accordingly, it should be allowed to continue liquidating its remaining assets in order to complete the process of dissolving the corporation. Likewise, it should be allowed to distribute the proceeds from said disposition to its stockholders or creditors if any. A contrary interpretation would have unjust and absurd results."

Thus, NLFI may still liquidate and dispose its lone asset despite the lapse of more than three (3) years since the revocation of its corporate charter.

On your other queries, please be advised that the Commission does not, as a matter of settled policy, render categorical opinions on issues which may potentially be litigated in the future in an intra-corporate and or civil case such as matters which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.[7]

Consuelo Metal Corporation v. Planters Development Bank[8] provides:

> "However, the SEC's jurisdiction does not extend to the liquidation of a corporation. **While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the**

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[4] SEC-OGC Opinion No. 15-11 dated 4 September 2015 addressed to Atty. Ronald S. Baquiano
[5] *Ibid., citing* SEC Commission En Banc decision in the case of Northern Luzon Transportation Inc., Isabela Cultural Corporation, petitioner, SECAC No. 347, 7 October 1991
[6] Now Section 139 of the RCC
[7] SEC Memorandum Circular No. 15, s. of 2003, No.5, 16 December 2003
[8] G.R. No. 152580, 26 June 2008

corporation now pertains to the appropriate regional trial courts." (Emphasis ours)

Hence, we are constrained from categorically answering your other queries. However, for purposes on information only, we impart the following:

> "'**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.**[9] x x x'
>
> 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 death, resignation, inability or refusal to act, of the directors or trustees, or the survivors, the court may appoint trustees to fill the vacancy, upon the application of any person interested.** "[10]

It was also opined that:

> "If the Board of Directors or a quorum can still be convened, then they should take care of the winding up of the corporation without need of any proceeding."[11]

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[12] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

ROMUALD C. PADILLA
General Counsel

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[9] SEC-OGC Opinion No. 15-09 dated 27 August 2015 addressed to Ms. Leticia M. Coronel citing Clemente v. CA, G.R. No. 82407, 27 March 1995

[10] Ibid. citing SEC-OGC Opinion No. 10-06 dated 29 January 2010 addressed to Chato & Vinzons Chato

[11] 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 addressed to Atty. Eliseo A. Fernandez

[12] SEC Memorandum Circular 2003-15, No. 7.