Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 24-06
Re: Liquidation beyond the 3-year winding up period.

04 April 2024

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Dear Attorney:

This refers to your letter dated 04 December 2023 requesting opinion relative to the liquidation of your client, L. Aznar-Alfonzo Realty and Holdings Corporation ("LAA Corp.").

You averred that LAA Corp. is a family corporation composed of the heirs and grandchildren of its founder and incorporator, the late Dr. Lydia Aznar-Alfonso, as its exclusive stockholders and members of the board. You also averred that LAA Corp.'s primary registration was *revoked* on 15 March 2004 for non-filing of reportorial requirements. Such revocation was confirmed by the Commission's Company Registration and Monitoring Department (CRMD) on 13 November 2023.

According to you, LAA Corp. has an investment in shares of stocks of Southwestern University-PHINMA("SWU-PHINMA"), a corporation which operates a school located in Cebu City. Sometime in August 2023, the President of SWU-PHINMA offered LAA Corp. to buy all of the latter's outstanding common shares in the university. However, SWU-PHINMA's Corporate Secretary informed the board of LAA Corp. that the latter has a revoked status in the Commission. The parties would like to ensure that LAA Corp. is eligible to enter into the buy-out transaction to liquidate its shares in SWU-PHINMA notwithstanding the revoked status of the corporation's primary registration. You emphasized that the purpose of LAA Corp for accepting the buy-out offer, despite the impressive financial performance of the university after the pandemic, is to serve its objective of slowly liquidating the assets of the corporation at consideration the stockholders find reasonable, in order to distribute to them the proceeds thereof.

Thus, you are seeking a legal opinion on whether or not the LAA Corp. can liquidate its investment, particularly shares of stocks in SWU-PHINMA, after the lapse of three years from the revocation of its primary registration.

Section 139 of the Revised Corporation Code of the Philippines[1] (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

[1] Republic Act No.11232, Revised Corporation Code of the Philippines, 20 February 2019.

> 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**. xxx" (Emphasis ours)

Once a corporate franchise is revoked, the corporation is dissolved.[2] Dissolution is a condition of law and fact which ends the capacity of the body corporate to act as such and necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate existence.[3]

A corporation whose registration 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.[4]

In ***Reyes and Pastor vs. Bancom Development Corporation,***[5] the Supreme Court discussed liquidation, to wit:

> "Section 122 of the Corporation Code[6] 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.
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> 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
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> 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
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> It is evident from the foregoing discussion of law and jurisprudence that the ***mere revocation of the charter of a corporation does not result in the abatement of proceedings***. Since its directors are considered trustees by legal implication, the fact that Bancom did not convey its assets to a receiver or assignee was of no consequence. It must also be emphasized that the ***dissolution of a creditor-corporation does not extinguish any right or remedy in its favor***.xxx"

The Commission opined[7] that "**while Section 122 of the Corporation Code** (now 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**. Following the pronouncement in the ***SEC Commission En Banc decision in the case of Northern Luzon Transportation Inc., Isabela Cultural Corporation petitioner, SEAC No. 347, 7 October 1991,*** quoted in part hereunder:

> "**Section 122 simply means that after the expiration of the three-year winding-up period, pending action by or against the dissolved corporation are abated**. Section 122 should not, however, be construed to

[2] SEC Opinion No. 01-06 dated 5 January 2006 addressed to Mr. Eliseo A. Fernandez
[3] SEC Opinion dated 20 August 2008 addressed to JT Leonardo C. Santos
[4] SEC-OGC Opinion No. 23-06 addressed to Atty. Jonathan Bagadiong dated 27 March 2023.
[5] *Ramon Reyes and Clara Pastor vs. Bancom Development Corporation*, G.R. No. 190286, 11 January 2018.
[6] Now Section 139, RCCP.
[7] *SEC-OGC Opinion No. 15-07* addressed to Atty. Nilo L. Geonzon, dated 21 July 2015.

> 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 years 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." (Emphasis ours)

The Commission further opined[8]:

> "**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 corporate liquidation.**[9]xxx
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> **During liquidation**, the remaining properties of the expired corporation are considered as held in trust by either **the court appointed receiver or, in the event that there is none, the directors and trustees of the corporation** at the time of the expiration of the corporate term." (Emphasis supplied)

Based on the foregoing, we answer your query in the affirmative.

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.[10] 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

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[8] *SEC-OGC Opinion No.14-29* addressed to Ms. Theresita M. Ceralde, dated 22 October 2014.
[9] SEC-OGC Opinion No.15-09 dated 27 August 2015 addressed to Ms. Leticia M. Coronel citing Clemente v. C.A., G.R No. 82407, 27 March 1995.
[10] Section 7, SEC MC No. 15 Series of 2003, 16 December 2003.