

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. 14-29

22 October 2014

**Re: Title to Real Properties;
Liquidation**

Ms. Theresita M. Ceralde
Blk 20 Lot 11 Turquoise St.,
Soldiers Hills III Subd.,
Tala, Caloocan City

Dear Madam;

This refers to your letter received by our Office on 14 September 2012 requesting for an opinion on the following:

1. Whether the title to real properties (subdivision lots) owned by a corporation whose term has expired but which applied for re-registration with the Commission under the same name and is composed by majority of the directors and officers of the expired corporation shall automatically vest upon the new re-registered corporation, without the need of liquidation, distribution and re-assignment of said real properties to the new corporation;
2. Whether the new corporation can continue the same line of business of the expired corporation (developing and selling subdivision lots under the mane of the expired corporation) without the expired corporation reassigning the said properties to the new corporation;
3. The effect on a third party purchaser of the subdivision lots buying from the new corporation in the event that the directors and stockholders of the revoked corporation question the sale;
4. The tax liabilities and legal implications on ownership of the subdivision lots in the sale of the said real properties by the new corporation.

The first paragraph of Section 122 of the Corporation Code of the Philippines provides as follows:

“Sec. 122. Corporate liquidation. - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.”

At the onset, it should be noted that once a corporation's term has expired, the said corporate entity ceases to exist except insofar as its liquidation or the winding down of its business affairs and the settlement of claims of its creditors is concerned.

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*¹ and as quoted in SEC-OGC Opinion No. 06-10,² 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.**

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."

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.

Once all claims of creditors are settled, the remaining assets of the corporation should be divided between and among the stockholders of the defunct corporation depending on their interest in the corporation and other contractual agreements they may have entered into.

¹ G.R. No. 82407, 27 March 1995.

² SEC-OGC Opinion No. 06-10 dated 29 January 2010 issued to Atty. Wilfredo M. Chato.

Accordingly, we answer your first query in the negative. It is mandatory for a dissolved corporation to commence a proceeding for liquidation of its assets and liabilities within three (3) years after its corporate term has elapsed³, which period may be extended depending on the successful distribution and disposal of the corporation's assets.⁴

In your case, it appears that the expired corporation has not completed its liquidation and there are numerous real properties still under its name. The obligation to dispose of the said real properties, through sale or other mode of assignment, in order to fully liquidate the corporation falls upon the directors of the said expired corporation so that all proceeds from the sale or assignment of the properties shall be divided accordingly among all those with remaining interest in the said expired corporation.

Thus, in the absence of corporate liquidation, the real properties of a corporation whose corporate term has expired cannot be automatically transferred to the new or re-registered corporation, as the new corporation is a different and distinct entity from the expired corporation.

The new corporation can succeed over ownership of the real properties owned by the dissolved corporation only in the event that a liquidation proceeding can be carried out by the directors acting as trustees of the dissolved corporation, and real properties distributed as liquidation dividends shall be assigned by the co-owners (i.e. stockholders of the old corporation) to the new corporation in exchange of new shares of stock to be issued by the new corporation⁵.

As to your second query, the new corporation can continue the same line of business of the expired corporation and sell the real properties of the latter, provided the procedure outlined in our answer to your first query is followed.

As to the third and fourth query, the Commission must refrain from issuing any opinion on the legal effects of the sale of real property by the new corporation while the said properties remain registered under the name of the expired corporation anchored on the following provisions of SEC Memorandum Circular No. 15, Series of 2003:

“5. As a matter of policy, the Commission shall refrain from rendering opinion in the following:

5.1 xxx

5.2 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;

³ SEC Opinion No. 06-33 dated 03 October 2006 addressed to Atty. Emilio A. Gancayco.

⁴ 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.

⁵ *Supra*, SEC Opinion No. 06-33.

5.3 Matters which would necessarily require a review and interpretation of contracts or an opinion on the validity of contracts since interpretation of contract is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues; xxx”

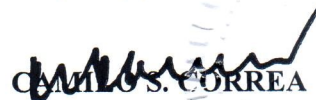
Further, as to your query on tax implications of the above-mentioned sale of property, kindly direct the same to the Bureau of Internal Revenue (BIR) as the agency best equipped to provide information on tax matters⁶.

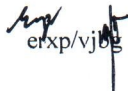
At this point, it may be prudent to exert all efforts to notify the members of the board of directors of the expired corporation at the time of the expiration of its corporate term of the necessity to complete the liquidation of the said corporation's remaining assets.

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


exp/vjbs

⁶ Section 5.6 of SEC MC No. 15, Series of 2003 provides that the Commission shall refrain from rendering opinion on “Requests which involve interpretation of administrative rules and issuances of other government agencies considering that it is the promulgating agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances; xxx”

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