



Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

09 March 2011

SEC-OGC Opinion No. 11-13
Corporate Term; Corporate Name

Paras & Manlapaz
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ATTENTION: Atty. Siddharta J.P. III S. Peñaredondo

Sir:

This refers to your 14 December 2010 letter requesting, in behalf of your client Ma Victoria Jose Cuisia, our opinion. You represent that:

"On 30 September 1958, Domel Realty and Development Corporation was issued a certificate of registration under SEC Registry No. 14492. (Annex A). Over the years, the said corporation engaged in business and acquired several real properties. 50 years after, the life and registration of the corporation expired. (SEC Certification dated 21 June 2010, Annex B).

On 24 April 2009, an entity entitled "Domel Realty and Development Corporation" filed their Articles of Incorporation (Annex C) and a certificate of incorporation was issued under company Registration No. CS200905931. (Annex D)

Our client is a stockholder of both entities."

Based on these representations, you ask the following questions:

"1. Despite having exactly the same name, is the legal personality of the Domel Realty and Development Corporation, registered under SEC Registry No. 14492, the same as the entity registered under company registration no. CS200905931?

2. Can the properties acquired by Domel Realty and Development Corporation (SEC Registry No. 14492) be disposed and sold by Domel Realty and Development Corporation (company registration no. CS200905931)?

3. Can the life of Domel Realty and Development Corporation (SEC Registry No. 14492), be extended through a board resolution, after the latter's expiration and without going through liquidation?"

We opine as follows:

1. Regardless of having exactly the same name, the two corporations do not have a single legal personality. Obviously, if two or more persons have the same name it does not mean that they only have a single personality in the contemplation of the law. It is not the name but the existence of the person that is material. It is the grant of the corporate charter that gives existence and a distinct juridical personality to a corporation. The two distinct registrations (SEC Registry No. 14492 and Company Registration No. CS200905931) mean that there were two separate and distinct grants of juridical personality upon two distinct corporations. Thus, the two corporations are not one and the same despite having the same name. The corporation registered under SEC Registry No. 14492 is a separate and distinct juridical entity from the corporation registered under Company Registration No. CS200905931.

In any case, if the Commission, after due notice and hearing, determines that the similarity in the names of the two corporations causes or is likely to cause confusion to the public then it will order a change of corporate name.

2. The properties owned by Domel Realty and Development Corporation (SEC Registry No. 14492) cannot be disposed and sold by Domel Realty and Development Corporation (Company registration no. CS200905931) save for a circumstance where there is a valid agreement between the two corporations authorizing the sale by one corporation in behalf of the other, such as an agency contract for example.

3. The corporate term of Domel Realty and Development Corporation (SEC Registry No. 14492) can only be extended in accordance with the provisions of the Corporation Code (Batas Pambansa bilang 68). In particular, Section 11 of the code provides:

"Section 11. Corporate term. - A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission."¹



¹ Underscoring ours.

We emphasize that the amended articles of incorporation extending the original term should be filed with the Commission **before the expiry date of the original term.**²

Thus, once the corporation's term has already expired, it can no longer be extended. The corporation's existence is terminated, and it proceeds to liquidation proceedings in accordance with Section 122 of the Corporation Code.³ Plainly, the corporation registered under SEC Registry No. 14492 no longer has any juridical personality save for the purposes of liquidation.

This Opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances. 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.


VERNETTE G. UMALI-PACO
General Counsel 

² See 8 Fletcher, Sec. 4099.

³ Section 122 of the Corporation Code provides:

"Section 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. xxx"