Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

26 April 2016

SEC-OGC Opinion No.16-09
Re: Issuance of Certificates of Stock
Sold in Delinquency Sale

MR. WILLY Y. TIENG
President
c/o Solar Entertainment Corporation
3rd Floor, Worldwide Corporate Center
Shaw Boulevard corner EDSA
Mandaluyong City 1552 Philippines

Sir:

This refers to your letter dated December 28, 2015 requesting for an opinion regarding the recording and issuance of certificates of stock for shares sold in a delinquency sale.

You stated in your letter that Manila Gold Coast Development Corporation (MGDC), a registered corporation and engaged in real estate business development has an authorized capital stock of One Billion (1, 000,000,000) shares with par value of One peso each (P1.00).

Top Sincere Investments, Ltd (Top Sincere), a foreign corporation, was the registered subscriber of Fifty Million (50, 000,000) shares of stock of MGDC (Subject Shares), Twelve Million Five hundred Thousand Pesos (P12, 500,000) of which has been paid as of July 2011.

On September 12, 2012, the board of directors of MGDC called for the payment of all unpaid subscriptions of shares of stock until October 12, 2012. Top Sincere was not able to pay its unpaid subscription despite notice; hence the Subject Shares were declared delinquent on October 13, 2012 and subsequently scheduled for sale on November 12, 2012.

During the delinquency sale, LST Development Corporation (LST) made a bid for the Subject Shares and was declared as the highest bidder. MGDC sold the Subject Shares to LST for Thirty Seven Million Five Hundred Thousand Pesos (P37, 500,000).

LST has fully paid the balance of the subscription price and expenses of the delinquency sale, which MGDC acknowledged.

From the foregoing, you ask for confirmation of your view that a corporation may automatically register in its books and issue stock certificates for shares sold in a delinquency sale upon full payment of the bid price. Thus, MGDC can now register the Subject Shares in its books and issue the corresponding certificate of stock in the name of LST.

Please be advised that the Commission does not, as a matter of settled policy, render categorical opinions on issues, such as yours, which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court in an intra-corporate [1]and/or civil case if the opinion turns out to be adverse to their interest.[2]

However for purposes of information only, the following are imparted:

Section 68 of the Corporation Code, provides in part:

> "Unless the delinquent stock holder pays to the corporation, on or before the date specified for the sale of the delinquent stock, the balance due on his subscription, plus accrued interest, cost of advertisement and expenses of sale, or unless the board of directors otherwise orders, said delinquent stock shall be sold at public auction to such bidder who shall offer to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share. **The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor**. The remaining shares, if any, shall be credited in favor of the delinquent stockholder who shall likewise be entitled to the issuance of a certificate of stock covering such shares."(Emphasis supplied).

In a previous Opinion of the Commission, it was held that in a delinquency sale, a certificate of stock shall be issued to the successful bidder if the full amount of the bid price, together with interest and expenses, has been paid at the time of the sale. [3]The highest bidder is the person offering at the sale to pay the full amount of the balance on the subscription together with accrued interest, if any, cost of advertisement and expenses of sale, for the smallest number of shares or fraction of a share of stock so purchased. The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor.[4] A stockholder has the right to

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[1] Pursuant to Section 5.2 of the Securities Regulation Code (SRC), the Commission's jurisdiction over all intra-corporate disputes under Section 5 of Presidential Decree No. 902-A has been transferred to the courts of general jurisdiction or the appropriate Regional Trial Courts

[2] SEC Memorandum Circular No. 15, Series of 2003, No. 5.2

[3] SEC-OGC Opinion No. 10-27, August 27, 2010, addressed to Atty. Alros B. Belloga

[4] *Ibid*;

have proper certificate issued to him as soon as he has complied with the conditions (i.e. full payment of the bid price and expenses) which entitled him.[5]

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

/gatb/vjbg

[5] R. Lopez, the Corporation Code of the Philippines, 1st Ed., p.798