OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 16-23
RE: Rights of a stockholder in a dissolved corporation

05 October 2016

SALVADOR J. ORTEGA, JR.
MANAHAN ENAGE & ORTEGA LAW OFFICES
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Dear Mr. Ortega:

This refers to your letter dated 25 January 2016, requesting for a legal opinion regarding the status and rights of a stockholder in a dissolved corporation with assets that remain unliquidated and is still doing business.

You stated that Silva Zapanta, Inc. (the "Corporation") was a domestic corporation duly registered with the Commission under SEC Registration No. A199709552, until its license was revoked on 15 March 2004. At the time the licensed was revoked, the Corporation owned and operated a four (4) story dormitory in Makati City. To date, the Corporation continues to own and operate the said dormitory and there appears no intention on the part of the officers running the Corporation to wind up corporate business and liquidate its assets. Further, you are not aware of any pending case filed to lift the order of revocation.

You also mentioned that your client, Dr. Victor Zapanta ("Dr. Zapanta"), was an incorporator and stockholder in the Corporation. Because he lived in the United States for a long time, and also due to the informal reporting by the managing officers, Dr. Zapanta had no clear picture of the Corporation's financial position especially since it never declared and distributed dividends for several years. On several occasions, Dr. Zapanta demanded to inspect the accounting and financial reports and records of the Corporation, but was continually denied by its president, Guillerma Silva, who insisted that since the license of the Corporation was already revoked, Dr. Zapanta is no longer a stockholder considering that there is no more Corporation to speak of. That being the case, Dr. Zapanta cannot invoke a stockholder's right to inspect corporate books under Section 74 of the Corporation Code (the "Code").

In this connection, you ask the following queries:

1. "Does a stockholder lose his status and title as such when the corporation is dissolved albeit its assets remain unliquidated and it continues to conduct its usual business?

2. Under the same circumstances, does a stockholder retain all his rights as such, including, but not limited to, the right to inspect corporate books?"

The matter at hand involves issues related to the enforcement of the rights of stockholders, which is classified as an intra-corporate controversy.

Please be advised that the Commission does not, as a matter of settled policy, render <u>categorical</u> opinions on issues which may potentially be litigated in the future in an intra-corporate[1] case which would, in all probability, be contested in court if the opinion turns out to be adverse to their interest.[2]

Hence, we are constrained from <u>categorically</u> answering your queries. However, for purposes of information <u>only</u>, we impart the following:

Under the Code, a corporation remains a body corporate for a limited purpose despite the revocation of its certificate of registration. The first paragraph of Section 122 of the Code provides the following:

> "**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, <u>shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved</u>**, 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, <u>but not for the purpose of continuing the business for which it was established."</u>** (Emphasis and underscoring supplied).

Based on the foregoing, a corporation with a revoked certificate of registration may continue as a body corporate for the purpose of liquidation and winding up of its affairs. Please note, that the body corporate, however, can no longer conduct the usual business provided in its primary purpose. Its existence continues only for purposes of liquidation and winding up of its affairs. The Supreme Court in the case of *Anthony S. Yu et al., vs. Joseph S. Yukayguan, et al.,* defines liquidation and winding up, to wit:

> "Following the voluntary or involuntary dissolution of a corporation, liquidation is the process of settling the affairs of said corporation, which consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts. More particularly, it entails the following:
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> **<u>Winding up the affairs of the corporation means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any among the stockholders thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests.</u>** The manner of liquidation or winding

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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 the Presidential Decree 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

up may be provided for in the corporate by-laws and this would prevail unless it is inconsistent with law."[3] (Emphasis and underscoring supplied).

With respect to jurisdiction over liquidation proceedings, please find instructive the case of *Consuelo Metal Corporation v. Planters Development Bank*[4], to wit:

"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 corporation now pertains to the appropriate regional trial courts.**"

As to the rights of stockholders, the Supreme Court in the case of *Clemente et al., vs. The Hon. Court of Appeals*, provides the following, to wit:

"The corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs, culminating in the disposition and distribution of its remaining assets. It may, during the three-year term, appoint a trustee or a receiver who may act beyond that period. **The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights** and liabilities of such entity (see *Gonzales vs. Sugar Regulatory Administration*, 174 SCRA 377) nor those **of its owners and creditors."** [5] (Emphasis and underscoring supplied).

One of the rights of stockholders is to share in the remaining assets of the corporation after all its creditors are duly paid.[6]

As to the specific right of the stockholder to inspect corporate books, this is governed by Section 74 of the Code.[7] The Supreme Court in *Gokongwei Jr. vs. Securities and Exchange Commission*, expounded on the stockholder's right of inspection, to wit:

The **stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a ownership. This right is predicated upon the necessity of self-protection**. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and **must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be**

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[3] *Anthony S. Yu et al., vs. Joseph S. Yukayguan, et al.*, G.R. No. 177549, 18 June 2009.
[4] G.R. No. 152580, June 26, 2008.
[5] *Clemente et al., vs. Hon. Court of Appeals*, G.R. No. 82407, 27 March 1995.
[6] *Supra* at 3.
[7] **Section 74.** *Books to be kept; stock transfer agent.* –
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The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense..."

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proper and lawful in character and not inimical to the interest of the corporation. [8] (Emphasis and underscoring supplied).

The Commission had previously explained that the right to inspect corporate books and records is based on the principle that "a stockholder has the right to be fully informed on the status and condition of the corporation xxx."[9] Such right can only be exercised for a legitimate purpose and "should be germane to the interest of the stockholder as such, as where the purpose is to find out the actual financial condition of the corporation and how his investment is being used."[10]

Please be guided accordingly.

for:

CAMILO S. CORREA
General Counsel

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[8] *John Gokongwei, Jr. vs. SEC et al.,* G.R. No. L-45911, 22 April 1979.
[9] SEC Opinion dated 14 September 1998 addressed to Mr. Juan T. Tasarra.
[10] *Ibid.,*