Securities and Exchange Commission PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23- 06
Re: Liquidation beyond the three-year period

27 March 2023

ATTY. JONATHAN A. BAGADIONG
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Dear Atty. Bagadiong:

This refers to your letter dated 07 December 2022[1] requesting, on behalf of your client, Yuchu Investment Corporation (Yuchu), for an opinion on the authority of the lone living stockholder and director to lawfully act as Yuchu's trustee-in-liquidation.

In your letter, you disclosed the following matters:

a) Yuchu was incorporated on 05 December 1956 with a corporate term of fifty (50) years;
b) Its corporate term expired on 05 December 2006;
c) It has several assets like real properties registered under its name, an existing bank account, and shareholdings in an equities company;
d) Yuchu has five (5) seats in the board of directors but at present, there is only one (1) living director. All of the other stockholders and officers of Yuchu are already deceased;
e) The three-year period to wind-up Yuchu's affairs and liquidate its assets lapsed without undergoing the same; and
f) Yuchu's sole living director is willing to undertake the liquidation of Yuchu.

You are now asking for an opinion on the following matters:

a) "May the lone living stockholder and director of Yuchu lawfully act as its trustee-in-liquidation to undertake the company's liquidation process?"; and

b) "If the said director can lawfully act as Yuchu's trustee-in-liquidation, can he execute a Special Power of Attorney delegating his authority to chosen representatives of the heirs of the deceased directors and stockholders of Yuchu?"

Section 139 of the Revised Corporation Code of the Philippines (RCCP) provides the following rule on 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 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

[1] Received by this Office on 11 January 2023 through e-mail and paid on 20 January 2023.

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> ***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.***[2] (Emphasis supplied)

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A corporation whose corporate existence expires, may continue as a body corporate for a limited period of three (3) years from the effective date of its dissolution, but 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.[3]

After the lapse of three (3) years, the corporation loses its limited corporate personality.

The normal method of procedure is for the directors and executive officers to have charge of the winding up operations, though there is the alternative method of assigning the property of the corporation to trustees for the benefit of its creditors and shareholders.[4] As such, liquidation may be effected in the following manners:

(a) Through the Board of Directors;
(b) Through a trustee to whom the corporation's properties are conveyed; and
(c) Through a receiver appointed by the Court.

The Commission En Banc interpreted the application of then Section 122 of the Corporation Code[5] in the case of ***In Re: Northern Luzon Transportation, Inc.***, *viz*:

> Section 122 should not however be construed to prevent a corporation from pursuing activities which would complete the final liquidation of a dissolved corporation. In this case, Northern Luzon Transportation, Inc. which term has long expired, was unable to dispose of its remaining assets even during the three-year period 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.[6] (Emphasis supplied)

In ***SEC-OGC Opinion No. 14-22***, the Commission rendered an opinion on the effect of non-appointment of a trustee or receiver during the three-year period, to wit:

> As enunciated by the Supreme Court in *Clemente v. CA*:
>
>> 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. 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* may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation. Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, might make proper representations with the Securities and Exchange Commission, which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns.[7]
>
> 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 itself may be permitted to so continue as "trustees" by legal implication to complete the corporate liquidation. Thus, the surviving Board of Directors may act or appoint themselves as "trustees" for Transpacific in order to carry out the liquidation of the corporation.[8]

As such, to answer your first question, the lone living stockholder and director of Yuchu may lawfully act as its trustee-in-liquidation to undertake the company's liquidation process. This is in line with ***SEC-OGC Opinion No. 10-06*** which provides the following:

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[2] Section 139, Republic Act (R.A) No. 11232, 23 February 2019.
[3] SEC-OGC Opinion No. 18-09 addressed to Atty. Ricardo B. Felix dated 04 June 2018.
[4] *China Banking Corp. v. M. Michelin & Cie.*, G.R. No. 36930, 30 June 1933.
[5] Now Section 139, RCCP.
[6] *In re Northern Luzon Transportation Inc.*, SEC AC No. 347 dated 07 October 1991.
[7] *Luis Clemente, et. al. vs. Court of Appeals, et. al.*, G.R. No. 82407, 27 March 1995 as cited in SEC-OGC Opinion No. 14-22 addressed to Mr. Manuel T. Hing dated 08 August 2014.
[8] SEC-OGC Opinion No. 14-22, *ibid.*

> Among them, you claim that only Mr. Victor U. Lopez is presently alive. All the others are already deceased. It is now your opinion that Mr. Victor U. Lopez has the sole authority to act as trustee in liquidation for the dissolved corporation, and that he can act as such even beyond the three-year liquidation period.
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> We opine that ***in case of the death of one or more directors during or after the three-year liquidation period, the surviving directors continue as trustee in liquidation, and may exercise the powers and duties of the deceased director-trustee.*** However, this is subject to the right of creditors, stockholders, and other persons interested in the corporate assets to petition the courts for the appointment of a trustee in liquidation.
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> xxxxx
>
> 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.[9] (Citations omitted, emphasis supplied)

As to your second query, please be informed that as a matter of public policy, the Commission refrains from rendering opinions on matters which will entail gathering of legal materials or writing abstract essay for the requesting party since the Commission ***should not function or resemble as legal counsel of private firms.***[10]

In your case, while your first question pertains to the interpretation of previous SEC Opinions on corporate liquidation like SEC-OGC Opinion No. 14-29 which was specifically cited in your letter, your second question, however, requires rendering an advisory opinion on the next steps to take after being designated as a trustee-in-liquidation. Please be reminded that ***rendering an advisory opinion on the possible steps to take is a function of a legal counsel of private firms,*** and is outside the authority of the Commission to provide.

This gains more significance considering that under the existing law, the approval of this Commission is not required in the distribution or liquidation of assets. There is nothing in Section 139 of the RCCP which requires this Commission's approval of distribution or liquidation of assets of a dissolved corporation. The same is a matter of ***internal concern of the corporation and falls within the power of the directors and stockholders or duly appointed liquidation trustee.***[11] Should there be substantial issues, the same may be brought to court, pursuant to the Court's ruling in ***Consuelo Metal Corporation vs. Planters Development Bank*** which provides that the ***SEC's jurisdiction does not extend to corporate liquidation***, 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. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.[12]

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[13] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

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[9] SEC-OGC Opinion No. 10-06 addressed to Chato & Vinzons-Chato Law Offices dated 29 January 2010. See also SEC-OGC Opinion No. 14-02 addressed to Atty. Vicente Gregorio dated 21 February 2014 and SEC-OGC Opinion No. 14-29 addressed to Md. Theresita Ceralde dated 22 October 2014.

[10] Section 5.10, SEC Memorandum Circular (MC) No. 15-03 dated 16 December 2003.

[11] SEC-OGC Opinion No. 15-11 addressed to Atty. Ronald S. Baquiano dated 04 September 2015.

[12] *Consuelo Metal Corporation vs. Planters Development Bank and Atty. Jesusa Prado-Maningas*, G.R. No. 152580, 26 June 2008.

[13] Section 7, SEC MC No. 15-03, *supra*.

Please be guided accordingly.

Very truly yours,

ROMUALD C. PADILLA
General Counsel