Securities and Exchange Commission PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

18 December 2023

SEC OGC Opinion No. 23-18

Re: Corporate existence beyond the three-year period provided under Section 139 of the Revised Corporation Code of the Philippines

AT LAGMAY LAW OFFICE
Unit 4F2 8101 Pearl Plaza
Pearl Drive, Ortigas Center
Pasig City 1605 Philippines

ATTENTION: **ATTY. HANNA JOY S. VILORIA**
hjsviloria@atlaw.com.ph

Dear Atty. Viloria:

This refers to your letter dated 07 April 2022, which was forwarded by the Company Registration and Monitoring Department (CRMD) to the Office of the General Counsel on 18 May 2022 through e-mail, requesting, on behalf of your client, Basay Development Company Inc. (BCDI), for an opinion on corporate existence beyond the three-year period provided under Section 139 of Republic Act (R.A.) No. 11232 or the Revised Corporation Code of the Philippines (RCCP).[1]

In your letter, you disclosed the following matters:

a) that BCDI's Certificate of Registration was revoked on 11 August 2003 for its failure to submit the required General Information Sheets (GIS) and Financial Statements (FS) for the years 1997 to 2002 based on Certification of Corporate Filing/Information issued by the CRMD on 05 January 2022 which was attached to your letter-request;
b) that BCDI failed to settle its affairs within the three-year period from its revocation to wind up its affairs; and
c) that there was no act performed by the persons concerned to initiate the winding up and liquidation within the three-year period.

You are requesting for an opinion on the following queries:

a) "Did BCDI lose its corporate personality to 'prosecute and defend suits by or against it and enable it to close its affairs'?";
b) "Does its corporate existence remain even if there is no act performed by the persons concerned to initiate the winding up and liquidation within the said three (3)-year period, or until its affairs have been fully wound up and all its assets fully liquidated?"; and
c) "May the SEC dissolution suffice to support the corporation's efforts to liquidate assets and effect business closure with government agencies including the Securities and Exchange Commission, Bureau of Internal Revenue, and Local Government Units concerned?"

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[1] Republic Act (R.A.) No. 11232, Revised Corporation Code of the Philippines (RCCP), 23 February 2019.

Section 139 of the RCCP provides the following rule on corporate liquidation:

> **SEC. 139.** ***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 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 registration is revoked may continue as a body corporate for a limited period of three (3) years from the effective date of its dissolution considering that Section 139 of the RCCP specifically applies to corporations "***whose corporate existence is terminated in any other manner***." However, this limited corporate existence is limited 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]

In ***Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio***[4], the Supreme Court interpreted the three-year period under Section 122 of the Corporation Code, now Section 139 of the RCCP, vis-à-vis the corporation's capacity to sue, *viz.*:

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> It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued ***as a corporation*** is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued; but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such ***in all matters connected with the liquidation***.
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> In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26, 2003. Based on the above-quoted provision of law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation.
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> It is likewise not disputed that the subject complaint was ***filed by petitioner corporation and not by its directors or trustees***. In fact, it ***is even averred, albeit wrongly***, in the first paragraph of the Complaint ***that "[p]laintiff is a duly organized and existing corporation under the laws of the Philippines, with capacity to sue and be sued. ..."***
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> Petitioner, nonetheless, insists that a corporation may still sue, even after it has been dissolved and the three-year liquidation period provided under Section 122 of the Corporation Code has passed. Petitioner cites the cases of *Gelano v. Court of Appeals*, Knecht *v. United Cigarette Corporation*, and *Pepsi-Cola Products Philippines, Inc. v. Court of Appeals*, as authority to support its position. The Court, however, agrees with the CA that in the above-cited cases, the corporations involved filed their respective complaints while they were still in existence. In other words, they already had pending actions at the time that their corporate existence was terminated.
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> The import of this Court's ruling in the cases cited by petitioner is that the trustee of a corporation may ***continue to prosecute*** a case commenced by the corporation within three years from its dissolution until rendition of the final judgment, even if such judgment is rendered beyond the three-year period allowed by Section 122 of the Corporation Code. However, ***there is nothing in the said cases which allows an already defunct corporation to initiate a suit after the lapse of the said three-year period***. On the contrary, the factual circumstances in the above-cited cases would show that the corporations involved therein ***did not initiate any complaint after the lapse of the three-year period.*** In fact, as stated above, the actions were already pending at the time that they lost their corporate existence.
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> In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner ***lacks the capacity to sue as a corporation***. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed

[2] Section 139, RCCP.
[3] SEC-OGC Opinion No. 23-06 addressed to Atty. Jonathan Bagadiong dated 27 March 2023.
[4] G.R. No. 187456, 02 June 2014.

> for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code[now Section 139, RCCP].[5] (Emphasis and underscoring supplied)

SEC-OGC Opinion No. 18-09[6] discussed the application of the three-year period in this wise:

> Based on the provision, a corporation, whose registration has been revoked, has three years from dissolution to continue to be a body corporate but only for purposes of winding up its affairs. Specifically, these actions should be for the purpose of (1) prosecuting and defending suits by or against it and enabling the dissolved Corporation to settle and close its affairs, (2) to dispose and convey its property, (3) and to distribute the corporate assets.
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> ***Thus, the defunct corporation cannot, by itself, institute an action in court and represent that it is an organized and existing corporation under Philippine laws with capacity to sue, beyond the 3-year period provided under Section 122 [now Section 139, RCCP].***

In ***Reyes and Pastor vs. Bancom Development Corporation***[7], the Supreme Court discussed the effect of revocation of a corporation's Certificate of Registration on court proceedings to liquidate its assets in its own name or on its behalf, to wit:

> Section 122 of the Corporation Code[8] provides that a corporation whose charter is annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs.
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> Based on the provision, ***a defunct corporation loses the right to sue and be sued in its name upon the expiration of the three-year period provided by law.*** Jurisprudence, however, has carved out an exception to this rule. In several cases, this Court has ruled that an appointed receiver, an assignee,3or a trustee may institute suits or continue pending actions on behalf of the corporation, ***even after the winding-up period.*** The rule was first enunciated in the 1939 case *Sumera v. Valencia*, in which we declared:
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>> [I]f the corporation carries out the liquidation of its assets through its own officers and continues and defends the actions brought by or against it, its existence shall terminate at the end of three years from the time of dissolution; but if a receiver or assignee is appointed, as has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested persons; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the officers of the corporation.
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>> For the foregoing considerations, we are of the opinion and so hold that when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by section 77 of Act No. 1459 known as the Corporation Law is not applicable, and the assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years.
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> In subsequent cases, the Court further clarified that a receiver or an assignee need not even be appointed for the purpose of bringing suits or continuing those that are pending. **In *Gelano v. Court of Appeals*, we declared that in the absence of a receiver or an assignee, suits may be instituted or continued by a trustee specifically designated for a particular matter, such as a lawyer representing the corporation in a certain case. We also ruled in *Clemente v. Court of Appeals* that the board of directors of the corporation may be considered trustees by legal implication for the purpose of winding up its affairs.**
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> Here, it appears that the SEC revoked the Certificate of Registration issued to Bancom on 26 May 2003. Despite this revocation, however, Bancom ***does not seem to have conveyed its assets to trustees or to its stockholders and creditors.*** The corporation has also ***failed to appoint a new counsel after the law firm formerly representing it was allowed to withdraw its appearance on 1 June 2004.*** Citing these circumstances, petitioners assert that these proceedings should be considered abated.
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> We disagree.
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> It is evident from the foregoing discussion of law and jurisprudence that the ***mere revocation of the charter of a corporation does not result in the abatement of proceedings.*** Since its directors are considered trustees by legal implication, the fact that Bancom did not convey its assets to a receiver or assignee was of no consequence. It must also be emphasized that the ***dissolution of a creditor-corporation does not extinguish any right or remedy in its favor.*** Section 145 of the Corporation Code[9] is explicit on this point:
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>> **Sec. 145. Amendment or repeal.** - No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired

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[5] *Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio, supra.*
[6] SEC-OGC Opinion No. 18-09 addressed to Atty. Ricardo B. Felix dated 04 June 2018.
[7] *Ramon Reyes and Clara Pastor vs. Bancom Development Corporation*, G.R. No. 190286, 11 January 2018.
[8] Now Section 139, RCCP.
[9] Now Section 184, RCCP.

> either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof.[10]
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> As a necessary consequence of the above rule, the corresponding liability of the debtors of a dissolved corporation must also be deemed subsisting. To rule otherwise would be to sanction the unjust enrichment of the debtor at the expense of the corporation.[11] (Emphasis supplied, citations omitted)

As mentioned in the ***Reyes and Pastor vs. Bancom*** case, there are instances wherein an action in court may be brought for the benefit of the defunct corporation even beyond the 3-year period. The Supreme Court, in ***Reburiano and Reburiano vs. Court of Appeals,*** elucidated on this, to wit:

> It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued; but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such in all matters connected with the liquidation.[12]

This is a reiteration of the point made in ***Tiburcio Sumera vs. Eugenio Valencia***[13], wherein the Supreme Court ruled that, "if the corporation carries out the liquidation of its assets through its own officers and continues and defends the action brought by or against it, its existence shall terminate at the end of three years from the time of dissolution, but if a receiver or assignee is appointed, as has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested person; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the offices of the corporation."[14]

Thus, the Commission, in ***SEC-OGC Opinion No. 03-33***, clarified that the three-year limitation period will not apply provided there is a trustee designated in accordance with the second paragraph of Section 122, to wit:

> In such cases, [par. 2 of Section 122] the three-year limitation period will not apply provided the designation of the trustee is made within said period. Unless the trusteeship is limited in its duration by the deed of trust, there is no time limit by which the trustee must finish liquidation, and he may sue or be sued even beyond the three-year period.

Further, in ***Clemente, et al. vs. Court of Appeals***[15], the Supreme Court held that:

> 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 nor those of its owners and creditors. 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 its behalf, might make proper representations with the Securities and Exchange Commission (now the courts), which has primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns.[16] (Citations omitted, emphasis supplied)

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[10] Now Section 189, RCCP.
[11] *Reyes and Pastor vs. Bancom, supra.*
[12] *James and Urbano Reburiano vs. Court of Appeals and Pepsi Cola Bottling Company of the Philippines*, G.R. No. 102965 January 21, 1999 as cited in SEC OGC Opinion NO. 18-09, *supra.*
[13] G.R. No. 45485, 03 May 1939.
[14] *Sumera vs. Valencia, supra.*
[15] G.R. No. 82407, 27 March 1995.
[16] *Clemente vs. CA, ibid.*, as cited in SEC-OGC Opinion No. 18-09, *supra.*

In ***SEC-OGC Opinion No. 14-22,*** the Commission applied ***Clemente vs. CA*** and 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*:
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> > 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. (Emphasis and underscoring supplied)
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> 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. 6 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.[17]

From the foregoing, it can be established that the general rule is that a defunct corporation loses the right to sue and be sued ***in its own name*** upon the expiration of the three-year period provided by law. The exception is that an appointed receiver, an assignee, or a trustee may institute suits or continue pending actions ***on behalf of the corporation***, even after the winding-up period ***in furtherance of the liquidation process***.[18] This is to ensure that Section 184 of the RCCP is complied with.[19]

Accordingly, as to your first and second queries, BCDI's corporate personality is already ***extinguished*** after the lapse of the three-year period granted under Section 122 of the Corporation Code [now Section 139, RCCP]. In BCDI's case, its registration was revoked on 11 August 2003. It had until 11 August 2006 to prosecute or defend any suit ***under its own name***.[20] If "no act was performed by the persons concerned to initiate the winding up and liquidation within the said three (3)-year period", then the obligation to complete the liquidation process falls upon the directors of BCDI as trustees or representatives on behalf of the corporation until all claims of creditors are settled, the remaining assets of the corporation are divided between and among the stockholders of the defunct corporation depending on their interest in the corporation, in accordance with Section 184 of the RCCP.

Lastly, as to your third query, we answer as follows:

a) As to the sufficiency of the "SEC dissolution"/Certificate of Corporate Filing/Information to support the corporation's efforts to liquidate the assets and effect business closure" **before the SEC**, we defer the matter to the Company Registration and Monitoring Department (CRMD) as the operating department concerned with the same. However, please note that Section 139 of the RCCP ***does not require SEC approval for the distribution of the remaining assets of a dissolved corporation***. The liquidation process is an ***internal concern*** of the corporation and falls within the power of the directors and stockholders to determine.[21]

In ***Consuelo Metals Corporation vs. Planters Development Bank and Atty. Jesusa Prado-Maningas,*** the Court discussed the matter of jurisdiction on liquidation in this wise:

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[17] SEC-OGC Opinion No. 14-22 addressed to Mr. Manuel Hing dated 08 August 2014.
[18] *Reyes and Pastor vs. Bancom, supra.*
[19] Section 184, RCCP provides the following:

> Section 184. *Effect of Amendment or Repeal of This Code, or the Dissolution of a Corporation.* – No right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof.

[20] Based on Certification of Corporate Filing/Information issued by the Company Registration and Monitoring Department (CRMD) on 5 January 2022 upon the request of Ms. Evelyn A. Lastimado which was attached to your letter-request.
[21] SEC-OGC Opinion No. 14-02 addressed to Atty. Vicente Gregorio dated 21 February 2014.

> However, ***the SEC's jurisdiction <u>does not extend to the liquidation of a corporation</u>***. 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***.
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> 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.[22] (Emphasis and underscoring supplied)

b) As to the sufficiency of the Certificate of Dissolution[23] to support the corporation's efforts to liquidate the assets and effect business closure" **with other government agencies**, we refrain from rendering an opinion on the same. Please be reminded that the Commission does not, as a matter of settled policy, render opinions on issues which would require an examination and review of the acts and ruling of another government agency. We suggest that you coordinate with the other government agencies directly as regards their requirements for application for closure of business.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted and 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.[24] If, upon further inquiry or 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,

ROMUALD C. PADILLA
General Counse

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[22] *Consuelo Metals Corporation vs. Planters Development Bank and Atty. Jesusa Pado-Maningas*, G.R. No. 152580, 26 June 2008.
[23] In your letter, you referred to this as "SEC dissolution".
[24] Section 7, SEC Memorandum Circular No. 15-03, 16 December 2003.