



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

OFFICE OF THE GENERAL COUNSEL

8 August 2014

SEC-OGC Opinion No. 14-22

Revoked Corporations;
who may be liquidators

MANUEL T. HING

President /Director/Stockholder

TRANSPACIFIC REALTY CORPORATION

19 General Malvar Street

San Antonio, Pasig City

Sir:

This refers to your letter dated May 7, 2014 requesting opinion on dissolution, revocation and/or liquidation in relation to Transpacific Realty Corporation (hereinafter "Transpacific"), with SEC No. AS93008769.

In your letter, you stated that Transpacific was revoked by this Commission on September 30, 2003 for non-filing of its annual reports. On March 4, 2014, you wrote this Commission's Company Registration and Monitoring Department (CRMD) to allow the corporation to file a Petition to Lift Order of Revocation, but this request was denied by the Commission on April 1, 2014.

Thus, you are seeking legal opinion on the dissolution of Transpacific and its subsequent legal effects. In order to appropriately address your queries, we answer your concerns sequentially, thus:

- (a) *"Is Transpacific automatically dissolved upon revocation of its Certificate of Registration/Incorporation last 30 September*

2003? Or does it have to secure a Certificate of Dissolution from the SEC?"

As you correctly represented, Transpacific's registration, together with other revoked corporations registered from 1992-1995, was revoked on November 3, 2003 by virtue of a SEC Order of Revocation dated September 30, 2003 for its failure to file its reportorial requirements.

In SEC Memorandum Circular No. 1, series of 2012 issued on March 8, 2012, this Commission provided a schedule for corporations covered by SEC Order of Revocation dated September 30, 2003 within which to file petitions to lift the orders of revocation issued against them. The said Memorandum Circular gave these corporations **until December 31, 2013** within which to file their respective petitions.

At any rate, once a corporate franchise is revoked, the corporation is dissolved.¹ In short, the effect of the Order of Dissolution is automatic² in that there is no more need for this Commission to issue any Certificate of Dissolution.

(b) "Assuming it is automatically dissolved last 30 September 2003, can Transpacific still undergo the process of liquidation by disposing of its remaining assets even beyond the three-year period of liquidation required by the Corporation Code? xxx"

The answer is in the affirmative. Section 122 of the Corporation Code provides as follows:

"Sec. 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

¹ SEC-OGC Opinion No. 09-24, July 28, 2009, addressed to Esguerra and Blanco Law Offices.

² SEC-OGC Opinion No. 06-01, January 5, 2006, addressed to Eliseo A. Fernandez.

distribute its assets, but not for the purpose of continuing the business for which it was established.”

(Emphasis and underscoring supplied)

While Section 122 of the Corporation Code gives a dissolved corporation three (3) years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period.³ As we previously opined:

“While Section 122 of the Corporation Code gives a dissolved corporation three (3) years to continue as a body corporate for purposes of liquidation, **the disposition of the remaining undistributed assets must necessarily continue even after such period** following the SEC Commission En Banc decision in the case of Northern Luzon Transportation Inc. Isabela Cultural Corporation, petitioner, SEC AC No. 347 October 7, 1991, quoted in part hereunder:

“‘Section 122 simply means that after the expiration of the three-year winding-up period, pending actions by or against the dissolved corporation are abated. 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 Corporation 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.’”⁴

³ SEC-OGC Opinion No. 09-31, December 9, 2009, addressed to Ms. Liza G. Bautista.

⁴ SEC Opinion dated May 14, 1996, addressed to Atty. Nita G. Untalan, citing Northern Luzon Transportation Inc. v. Isabela Cultural Corporation, SEC AC No. 347 October 7, 1991. Cf. note 3.

- (c) *"Can the directors and remaining stockholders appoint a trustee/liquidator among themselves even beyond the three-year period of liquidation required by the Corporation Code?"*

As enunciated by the Supreme Court in *Clemente v. CA*:⁵

"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. xxx 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* (103 SCRA 90) 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)

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.

⁵ G.R. No. 82407, March 27, 1995, 242 SCRA 717.

⁶ SEC-OGC Opinion No. 03-33, June 16, 2003, addressed to Atty. Teresita A.M. Villaruz.

(d) "Can the directors and remaining stockholders appoint a trustee/liquidator to solely undertake the liquidation process and dispose of the remaining assets of the corporation without filing a petition to the courts (or SEC) for the appointment of the trustee-in-liquidation/liquidator?"

Normally, corporate liquidation is effected by the corporation itself through the directors or trustees and executive officers who are charged with the winding-up of corporate affairs.⁷ It should be emphasized that under the existing law, the approval of this Commission is not required in the distribution and liquidation of assets.⁸ There is nothing in Section 122 of the Corporation Code 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.⁹

If there are substantial issues, however, please find instructive the pronouncement in the case of *Consuelo Metal Corporation v. Planters Development Bank*,¹⁰ as cited in a previous opinion,¹¹ 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."

(Emphasis and underscoring supplied)

⁷ SEC-OGC Opinion No. 04-20, March 25, 2004, addressed to Atty. Rodolfo V. Romero, citing *China Banking Corporation v. M. Michelin and Cie*, 58 Phil. 261 (1933)

⁸ *Ibid.*

⁹ SEC-OGC Opinion No. 14-02, February 21, 2014, addressed to Atty. Vicente G. Gregorio, citing citing SEC Opinion dated February 14, 1995 addressed to Atty. Antonio M. Albano.

¹⁰ G.R. No. 152580, June 26, 2008, 555 SCRA 465.

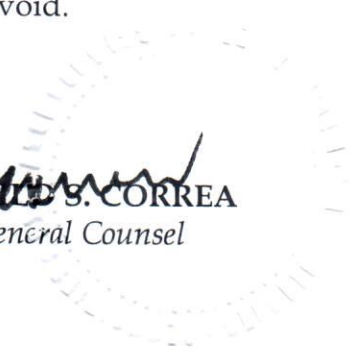
¹¹ *Supra*, Note 9.

- (e) *"If one of the directors/stockholders of Transpacific is already deceased, can the remaining directors appoint a trustee/liquidator among themselves or perform other acts of corporate liquidation without filling the vacancy in the board, assuming that they still constitute a quorum?"*

If the Board of Directors or a quorum thereof can still be convened, then they should take care of the winding up of the corporation without need of any proceeding.¹²

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases 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.


CAMILO S. CORREA
General Counsel




/s/

¹² SEC-OGC Opinion No. 07-02, *supra*. (Note 2)

¹³ SEC Memorandum Circular 2003-15.