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

OFFICE OF THE GENERAL COUNSEL

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SEC Opinion No. 06-33
Expiration of Term: Ownership of a Real Property

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Sir:

This refers to your letter dated 14 June 2006 requesting opinion relative to reincorporation and its legal implications.

You stated in your letter that D. N. Venegas & Co., Inc., a domestic corporation, was originally incorporated on May 3, 1967, for a term of twenty-five (25) years. In 1973, it acquired a land issued in its name. For several years, the corporation continued its operations until 2003, when it discovered that it was operating under a lapsed corporate term. To rectify what it honestly believed was an administrative oversight, it re-incorporated on February 4, 2003 under the same corporate name, capital structure, purposes, principal office address, and substantially the same corporate officers, incorporators, board of directors and shareholders.

Hence, you posed the queries, to wit:

1. Does D. N. Venegas & Co., Inc., as re-incorporated, remain as the registered owner of a property owned by the dissolved D.N. Venegas & Co., Inc.?

2. Can the re-incorporated D. N. Venegas & Co., Inc. sue or be sued as the registered owner of said real property?

3. How can the re-incorporated D. N. Venegas & Co., Inc. succeed as owner of said real property?

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A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended.[1]

Upon the expiration of the period fixed in the Articles of Incorporation, in the absence of compliance with the legal requisites for the extension of the period, the corporation ceases to exist and is dissolved ipso facto.[2]

Anent the first issue, it is mandatory for a dissolved corporation to commence a proceeding for the liquidation of its assets and liabilities within three (3) years after its corporate term had elapsed. Section 122 of the Corporation Code provides and we quote:

> "Section 122. Corporate liquidation - Every corporation whose charter expire 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 distribute its assets, but not for the purpose of continuing the business for which it was established."

In the absence of a corporate liquidation, the real property of a dissolved corporation cannot be automatically transferred to the re-incorporated D. N. Venegas & Co., Inc.

On the second issue, the re-incorporated D. N. Venegas Co., Inc. cannot sue or be sued as the registered owner of a real property owned by the dissolved corporation. It must be emphasized that the re-incorporated D. N. Venegas Co., Inc. is a new entity distinct and separate from the dissolved corporation, even though the two corporations have the same corporate names, incorporators and stockholders. Thus, any suit or claim on the real property must be directed to the "Trustees"[3] of the dissolved corporation for its liquidation.

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[1] Section 11 of the Corporation Code of the Philippines.

[2] Philippine National Bank vs. The Court of First Instance, Pasig –Branch 12 et al., G.R. No. 63201, May 27, 1992.

[3] Section 122. Corporate liquidation. xxx xxx xxx

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

In Clemente et al. vs. Court of Appeals, G.R. No. 82407, March 27, 1995, it was held that:

Lastly, the re-incorporated D. N. Venegas & Co., Inc. can succeed ownership over the real property owned by the dissolved corporation only in the event that a liquidation proceeding can be carried out by the Directors acting as Trustees of the dissolved corporation and real properties distributed to the stockholders as liquidation dividends shall be assigned by the co-owners to the new corporation in exchange of new shares of stocks to be issued by the re-incorporated D. N. Venegas.

It shall be understood that the opinion rendered is based 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 Commission in other cases whether of similar or dissimilar circumstances.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

"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 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."