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

**OFFICE OF THE GENERAL COUNSEL**

15 February 2007

SEC-OGC Opinion No.07-02
(Dissolution and Winding Up)

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Dear Sir:

We write in response to your January 10, 2007 request for an opinion regarding the dissolution of your client corporation, whom you refer to only as ABC, the term of which expired in 2006.

In response to your first query, there is no need for the company to apply for an order from the Commission for the dissolution and liquidation of the corporation under the current circumstances. The pertinent provision of law on corporate liquidation is Section 122 of BP Blg. 68, also known as the Corporation Code of the Philippines, which provides:

> 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 distribute its assets, but not for the purpose of continuing the business for which it was established.
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> xxx (Emphasis supplied).

In the case of *Philippine National Bank v. Court of First Instance of Rizal, Pasig, et al*,[1] the Supreme Court stated:

1 G.R. No. 63201. May 27, 1992.



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> 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* ... There is ***no need for the institution of a proceeding for quo warranto to determine the time or date of the dissolution of a corporation because the period of corporate existence is provided in the articles of incorporation.*** When such period expires and without any extension having been made pursuant to law, the corporation is dissolved automatically insofar as the continuation of its business is concerned. (*Emphasis supplied; citations omitted*).

In sum, there is no need for a separate order from the Commission, considering that the corporate term of 50 years has already lapsed.

Moving on to your second query, the distribution of ABC's remaining assets falls upon its Board of Directors, whoever they may have been at the time of ABC's dormancy. It is the Board of Directors that acts on the corporation's behalf when winding up its affairs. The corporation, through its Board, may appoint trustees or a receiver to continue its winding up beyond the three-year period. In *Clemente v. Court of Appeals*,[2] the Supreme Court stated:

> 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 decision in *Gelano v. 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 representation with the Securities and Exchange Commission, which has a primary and sufficiently broad jurisdiction in matters of this nature, for working out a final settlement of the corporate concerns. (*Citations omitted*).

If the Board of Directors or a quorum thereof can still be convened, then they should take care of the winding up of ABC without need of any proceeding, whether before the Commission or the courts.

Regarding your third query, there is, in the case of expiration of corporate term,

2 G.R. No. 82407, March 27, 1995.



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no specific statutory requirement that the same be published, much less that the stockholders be enjoined to furnish the corporation with their addresses. There is, however, the duty of the corporation to wind up its affairs within three years from the date of dissolution, as provided in Section 122 of the Corporation Code. During this period, the 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." Notably, however, under the same section of the law, any property owed to a creditor or stockholder who is "unknown or cannot be found" is escheated to the local government where the property is located. It would seem that if these parties cannot be found, then the corporation is under no obligation to exert any diligence in finding them beyond that of a good father of a family.

With respect to your fourth query, we cannot advise you on how to revert the retirement fund to ABC considering we have no information on how ABC's employees were terminated, nor any details of this retirement plan.

Finally, as to your final query, please note that the corporation ceased to exist as a business entity last year, per Section 122 of the Corporation Code, but it continues to exist for the purposes of winding up its affairs and settling its accountabilities to its various creditors, including the state. The issue of whether ABC should be required to file an Income Tax Return, and who should do this, would be more properly addressed to the Bureau of Internal Revenue considering that this involves an interpretation of the National Internal Revenue Code and/or other tax laws.

Please be guided accordingly.

**VERNETTE G. UMALI-PACO**
**General Counsel**

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