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-OGC Opinion No. 08-17
Effect of re-registration of
a revoked corporation

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Attention: Atty. Clifford Richard Genesela

Gentlemen:

This pertains to your letter dated 29 January 2008 requesting opinion on the effect of re-registration of an old corporation under a new set of incorporators.

As a brief background, Capricorn Development Realty Corporation (hereinafter referred to as the Senior Corporation) was registered with the Commission under registration number CS0000067914 sometime in 1976. The Senior Corporation was granted a fifty-year existence. Sometime in the 1980s, the incorporators and the majority stockholder of Capricorn executed a Trust Agreement in favor of the then president. The tenor of the Trust Agreement is that the trustee is the absolute owner of Twenty Thousand shares with par value of One Hundred Pesos (Php100.00) per share but the shares were registered in the name of the trustors and that they (trustors) hold the shares in behalf and in trust for the trustee.

Due to its failure, however, to comply with the reportorial requirements of this Commission, the Senior Corporation's certificate of registration was revoked by virtue of S.E.C. Order dated 08 July 2003. The said order was published in a newspaper of general circulation on 11 July 2003. The revocation became effective on 11 August 2003.

The Senior Corporation was alleged to have been re-registered on 23 April 2007 under a new registration number CS200706098. The Junior Corporation has its own set of incorporators.

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You would like now to know the effect of re-registration of a revoked corporation.

One of the modes of termination of corporate existence is through the annulment by forfeiture of its franchise as decreed by this Commission.[1] Upon termination of its existence, a corporation loses the power to deal and enter into further legal relations with other persons; it may have only such rights as may be required by the process of liquidating and winding up its affairs.[2] Dissolution is a condition of law and fact which ends the capacity of the body corporate to act as such and necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate enterprise.[3]

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

Applying the foregoing legal provisions in the case of the subject corporations, this Office is of the opinion that in the absence of corporate liquidation, the properties and any rights of the Senior Corporation cannot be deemed to be transferred to the Junior Corporation even if the two corporations have the same name albeit different set of incorporators. Thus, for all intents and purposes, the two corporations are separate and distinct from each other.

This Office had also the occasion to render an opinion involving the issue as in the instant query.[4] The relevant portion of the opinion is quoted as follows:

> "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.
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> 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.

1 Sec. 122, Corporation Code of the Philippines.
2 AGPALO, RUBEN. COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES 430 (2001).
3 Section 7966, 16A Fletcher Cyc Corp (Perm Ed) 8.
4 SEC-OGC Opinion No. 33-06 dated 03 October 2006.

> Lastly, the reincorporated 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."

The Junior Corporation can only succeed ownership over the properties and the rights of the dissolved corporation in the event a liquidation proceeding is carried out and distributed to the stockholders, who in turn, are willing to exchange the properties of the Senior Corporation with the shares of the Junior Corporation. In other words, unless the old corporation has liquidated its assets and transferred the same to the new corporation, the two corporations will have their separate and distinct assets and liabilities. Based on that, the Senior Corporation must undergo liquidation and wind up its affairs before its rights are transferred or assigned to the Junior Corporation.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

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General Counsel

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