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

July 28, 2009

SEC-OGC Opinion No.09-19

Rights of a corporation under liquidation

FIRST PROVINCIAL FINANCE CORPORATION
House I, Gatuslao corner Nueva Streets
Bacolod City

Attention: **MR. CONRADO P. LO, JR., CPA, MBE, Ph.D.**
President

Gentlemen:

This refers to your letter dated 29 January 2009.

You allege that your client corporation, Arca & Company, Inc., was registered in 1949, its license to operate was revoked by the Commission in 1997, and its corporate life automatically expired in 1999. During its existence, its agricultural lands were either taken over by the government pursuant to Presidential Decree No. 72, or voluntarily offered for sale under R.A. 6657. Starting 2002, its property was paid by the Land Bank of the Philippines ("LBP" for brevity) in small parcels at a very low valuation thereby forcing it to file for revaluation of the property with the Department of Agrarian Reform Adjudication Board ("DARAB," for brevity). This claim is still pending with the DARAB. Recently, the Department of Agriculture approved payment for a parcel of land by the Land Bank. However, where before the LBP only required a certified copy of the Articles of Incorporation and the by-laws to be submitted, starting this year, LBP now requires a certification of the present corporate status.

Hence, you request the Commission's opinion on the following question:

"Can the corporation still demand payment and is the Land Bank obligated to pay our client for the value of the land already approved by the DAR for payment, inspite of the revocation of its license to

operate and the expiration of its corporate life? The corporation has not been operating since 1986 and has only been liquidating all its remaining assets."

The Corporation Code provides that corporations, whose corporate existence is terminated, shall continue as a body corporate for three (3) years for the purpose of liquidation.[1] However, the corporation's dissolution, or the expiration of its three-year liquidation period, is not a bar to the enforcement of its rights as a corporation.[2]

In the case of *Sumera v. Valencia*,[3] the Supreme Court held:

> "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 (Corp. Law, Sec. 78 [now Sec. 122]) 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

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[1] Batas Pambansa Bilang 68, Section 122 provides:

> "Section 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.
>
> At any time during said three (3) years, 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. 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.
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> Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located."
>
> Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

[2] *Rene Knecht and Knecht, Inc. vs. United Cigarette Corp., et. al.*, G.R. No. 139370, July 4, 2002.
[3] 67 Phil. 721, 726 (1939).

that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued (7 R.C.L., Corps., par. 750); **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**. . . ." (Emphasis added.)

Further, in the case of *Gelano vs. Court of Appeals*,[4] the Supreme Court ruled:

> However, a corporation that has a pending action and which cannot be terminated within the three-year period after its dissolution is authorized under Sec. 78 [now §122] of the Corporation Law to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the three-year period. Although private respondent did not appoint any trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only. Said counsel had been handling the case when the same was pending before the trial court until it was appealed before the Court of Appeals and finally to this Court. We therefore hold that there was substantial compliance with Sec. 78 [now §122] of the Corporation Law and such private respondent Insular Sawmill, Inc. could still continue prosecuting the present case even beyond the period of three (3) years from the time of dissolution.
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> **...[T]he trustee may commence a suit which can proceed to final judgment even beyond the three-year period.** No reason can be conceived why a suit already commenced by the corporation itself during its existence, not by a mere trustee who, by fiction, merely continues the legal personality of the dissolved corporation should not be accorded similar treatment allowed ¾ to proceed to final judgment and execution thereof." (Emphasis added.)

Indeed, the rights of a dissolved corporation are accorded protection by law under Section 145 of the Corporation Code, which provides:

> "Section 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 either by the subsequent dissolution of said corporation or by any

[4] 103 SCRA 90 (1981).

subsequent amendment or repeal of this Code or of any part thereof."

Incidentally, in the case of *Clemente v. Court of Appeals*,[5] the Supreme Court held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication.[6]

In view of the foregoing, your client corporation, through its trustees, may still demand payment from Land Bank despite its dissolution by virtue of the revocation and/or expiration of its corporate franchise.

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

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[5] 242 SCRA 717 (1995).
[6] Cited in *Reburiano vs. Court of Appeals*, 301 SCRA 342 (1999).