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

9 December 2009
SEC-OGC Opinion No. 09-31
Re: Corporate Liquidation

MS. LIZA G. BAUTISTA
Chengtsaijun Building, 533 Quirino Avenue,
Paranaque City

Madam:

This refers to your letter of 18 November 2009 requesting opinion on whether La Perla Industries, Inc. ("La Perla", for brevity), a dissolved corporation, can sell some of its real properties.

You mentioned that two (2) parcels of land under Transfer Certificates of Title Nos. T-38032 and 38033 are registered in the name of La Perla, free from liens and encumbrances. These properties are the subject of *Civil Case No. 6778-R for Injunction and Damages with Prayer for Preliminary Mandatory Injunction*[1] pending before Branch 7 of the Regional Trial Court ("RTC") of Baguio City. Based on the documents you submitted, they are likewise the subject of *Land Registration Case No. 1761-R*[2], a petition for cancellation of adverse claim pending before Branch 5 of the RTC of Baguio City. It appears, however, that La Perla is now dissolved in that its corporate term already expired on 5 January 2001. Hence, your query.

Section 122 of the Corporation Code 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.

[1] Entitled, "*La Perla Industries, Inc., Johnson Cheng, Amy Cheng, Johnny C. Cheng, Jr., Lucy D.L. Cheng, Joan D.L.C. Tan, Jean D.L. Cheng, and Jorge R. Perez vs. Sps. Evelyn Austriaco Sherrell & Ken Sherrell.*"
[2] "*In Re: Petition for Cancellation of Adverse Claim, Johnson Cheng, Amy Cheng, Johnny C. Cheng, Jr., Lucy D.L. Cheng, Joan D.L.C. Tan, Jean D.L. Cheng, Jorge R. Perez, and La Perla Industries, Inc., Petitioner(s).*"

> 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.
>
> xxx xxx xxx."

Based on the above provision, there is, as a general rule, no juridical personality after dissolution. If there is, it is only a juridical personality to serve but one purpose - for all transactions pertaining to liquidation, culminating in the disposition and distribution of the dissolved corporation's remaining assets. Any matter entered into that is not for the purpose of liquidation will be a void transaction because of the non-existence of the corporate party.[3]

In May 1996, when confronted with the query of whether the three-year liquidation period required under Section 122 could be extended, we answered in this wise:

> "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:
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> > '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

[3] SEC Opinion No. 33-03 dated 16 June 2003 addressed to Atty. Teresita A.M. Villaruz.

any. A contrary interpretation would have unjust and absurd results."' (Emphasis supplied)[4]

The above opinion/ruling is in accordance with the 1995 decision of the Supreme Court in the case of *Clemente vs. Court of Appeals*[5], to wit:

"The corporation continues to be 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, G.R. No. L-39050, February 24, 1981, ***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 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 supplied)

We note that in its Orders of 1 June 2009 and 15 September 2009 herein attached, Branch 5 of the RTC of Baguio City, citing, among others, *Clemente vs. Court of Appeals*, considered the stockholders of La Perla, i.e. individual petitioners, as trustees by legal implication who, pending the winding up of its corporate affairs, are parties in interest in the said case and as such may be joined as co-petitioners.

From the foregoing, and on the assumption that the contemplated sale of the parcels of land would be in pursuance of the liquidation of La Perla, we answer your query in the affirmative.

The opinion is based solely on the facts disclosed in the query and relevant only to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the

[4] SEC Opinion dated 14 May 1996 addressed to Atty. Nita G. Untalan. See also a reiterative opinion, SEC Opinion No. 23-05 dated 23 December 2005 addressed to Ms. Stella Marts R. Pelino, stating that: "*Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.*"

[5] G.R. No. 82407, 27 March 1995.

Commission in other cases or upon the courts.[6] If, upon investigation, it will be declared that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[6] Section 7, SEC Memorandum Circular No. 15, Series of 2003.