Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

29 January 2010

SEC-OGC Opinion No. 10-06

Liquidation

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ATTENTION: Atty. Wilfredo M. Chato

Gentlemen:

This refers to your letter dated 22 December 2009 requesting confirmation of your opinion that your client, being the sole surviving incorporator-director of a dissolved corporation, has the authority to act as trustee in liquidation.

You represent that Lopez Enterprises, Inc. was incorporated in October 1936 by the following incorporators:

1. Mr. Benito Lopez
2. Mr. Victor U. Lopez, Jr.
3. Mr. Nelly Lopez de Zamora
4. Mr. Salvador Zamora
5. Ms. Lilia Lopez
6. Ms. Elena H. Lopez

You allege further that the corporation's term of existence, which is fifty (50) years from the date of its incorporation, expired on October 1986. The three-year liquidation period lapsed without the appointment of a trustee in liquidation, and the dissolved corporation's remaining asset, which is a property at 512 R. Salas St. Ermita, Manila, consisting of land and building, has not been liquidated yet up to now.

Its latest General Information Sheet, for 1994, lists the following stockholders and directors:

Directors

1. Mr. Vicente Lopez, Jr.
2. Mr. Victor U. Lopez, Jr.
3. Ms. Ma. Zita Z. Lopez
4. Ms. Ma. Teresa Lopez
5. Ms. Ma. Elena Z. Lopez

Stockholders

1. Mr. Vicente Lopez, Jr.
2. Mr. Victor U. Lopez, Jr.
3. Ms. Ma. Rita Z. Lopez
4. Ms. Ma. Teresa Lopez
5. Ms. Ma. Elena Z. Lopez
6. Ms. Lourdes L. Katigbak
7. Ms. Ma. Aurora Z. Lopez
8. Mr. Vicente Lopez III
9. Mr. Jose Mari Lopez

Among them, you claim that only Mr. Victor U. Lopez is presently alive. All the others are already deceased. It is now your opinion that Mr. Victor U. Lopez has the sole authority to act as trustee in liquidation for the dissolved corporation, and that he can act as such even beyond the three-year liquidation period.

We opine that in case of the death of one or more directors during or after the three year liquidation period, the surviving directors continue as trustee in liquidation, and may exercise the powers and duties of the deceased director-trustee. However, this is subject to the right of creditors, stockholders, and other persons interested in the corporate assets to petition the courts for the appointment of a trustee in liquidation.

Section 122 of the Corporation Code,[1] 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.

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.

Upon 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."

In the case of *Clemente, et al. vs. Court of Appeals, et al.*,[2] the Supreme Court held:

"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* (103 SCRA 90) 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

[1] BATAS PAMBANSA BILANG 68 (1950).
[2] G.R. No. 82407, March 27, 1995.

corporation, acting for and in 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."[3]

In our jurisdiction, the statutes and jurisprudence are silent regarding the consequences of the death of a director, acting as trustee in liquidation, during the liquidation or winding up period. In some American jurisdictions, directors who become trustees of the corporation on dissolution hold on as joint tenants with right of survivorship incident to their tenancy.[4] In other words, when one or more directors die, the surviving trustees take the whole title subject to the trust,[5] and the latter may exercise the powers and duties of the deceased director-trustee. However, it is also provided that in case of the death, resignation, inability or refusal to act, of the directors as trustees, or the survivors, the court may appoint trustees to fill the vacancy, upon the application of any person interested.[6]

Adopting these legal principles from American corporation law, from which our corporation law was patterned, we opine that Mr. Victor U. Lopez may act as trustee in liquidation. However, this is without prejudice to the right of a person in interest to petition the courts for the appointment of a different trustee in liquidation on account of Mr. Victor U. Lopez's refusal or inability to wind up the affairs of the dissolved corporation within a reasonable period.

This *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.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

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[3] Underscoring ours.
[4] North Carolina. Thomas v. Rogers, 191 NC 736, 133 SE 18.
[5] Texas. Aldrige v. Pardee, 24 Tex Civ App 254, 60 SW 789, 791.
[6] Missouri. Hentschel v. Fidelity & Deposit Co. Of Maryland, 87 F2d 833; Montana. State v. District Court in and for Granite County, 108 Mont 51, 88 P2d 34.