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

OFFICE OF THE GENERAL COUNSEL

16 June 2011

SEC-OGC Opinion No. 11-30

Dissolution & Liquidation

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Madam:

This refers to your 06 April 2011 letter requesting opinion on the procedures for dissolution of Cebu Memorial Park, Inc (Cempark).

You allege that: (1) you are a stockholder and director of the subject corporation that is engaged in the selling of lots in a park for interment purposes; (2) as seller, the corporation agreed that the park is to be operated as a perpetual care cemetery, and that the deposit by the purchaser shall be placed in trust for the maintenance of the park; (3) that the net income of the existing trust fund adequately covers the annual maintenance of the park; and (3) now, it is your intention to dissolve the corporation and turn over the management of the park to the lot owners.

Thus, you ask for the Commission's opinion on whether the following is possible:

1. For the corporation to start distributing liquidating dividends.
2. For the corporation to dissolve and turn over management of the park to lot owners.
3. For the lot owners to elect a board of directors that will manage the park.

You seek the Commission's advice on how you should proceed with these matters.

We advise as follows:

1. Liquidating dividends are dividends which are actually distributions of assets of the corporation upon dissolution.[1] They are not paid on account of earnings or profits, but as a return of capital invested.[2]

   Under Section 122 of the Corporation Code,[3] "no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities."

   In other words, the corporation can only distribute liquidating dividends after it is dissolved, and all of its creditors have been paid.

2. A corporation may be dissolved voluntarily by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members of a meeting to be held upon call of the directors or trustees. Pursuant to Sections 117 to 120 of the Corporation Code, the Commission will issue the certificate of dissolution upon an application complying with the following requirements:

   a. Directors' Certificate – a notarized document signed by a majority of the directors/trustees and the corporate secretary, certifying: (1) the amendment of the Articles of Incorporation shortening the corporate term or the resolution adopting the dissolution, as the case may be; (2) the votes of the directors/trustees and stockholders/members; and (3) the date and place of the stockholders'/members' meeting;

   b. Amended Articles of Incorporation (in case where dissolution is by shortening of corporate term);

   c. Audited financial statements as of date of the stockholders' meeting approving the dissolution or any date thereafter but not earlier than 60 days prior to the date of filing of the application;

   d. List of creditors, if any, and the consent of the creditors, or certification as to non- existence of creditors;

   e. Certificate of No Tax Liability issued by the Bureau of Internal Revenue;

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[1] *SEC Opinion No. 70-03(16 December 2003), citing Wise & Co. vs. Meer, G.R. No. 48231, June 30, 1947.*
[2] SEC Opinion No. 70-03.
[3] *Batas Pambansa Bilang 68 (01 May 1980).*

f. Publisher's affidavit of the publication of the notice of dissolution of the corporation (once a week for three [3] consecutive weeks);

g. Endorsement/clearance from other government agencies, if the corporation engages in an activity regulated by such agencies;

However, if consent of the creditors was not obtained, then aside from the foregoing requirements, the application should be in the form of a petition. The petition shall be filed with the Commission, and judgment shall be rendered after due notice and hearing in accordance with Section 119 of the Corporation Code.

After dissolution, the corporation can continue as a body corporate for three (3) more years for the purpose of winding up its affairs, enabling it to dispose its property, and distribute its assets.[4]

From the facts that you have represented, we understand that Cempark, as seller, is obligated to perpetually manage the park for the benefit of the lot owners. This outstanding obligation means that every lot owner is a creditor of Cempark. Hence, **you need to obtain the consent of each and every lot owner in order to dissolve Cempark.**

Further, **you must also secure the consent of each and every lot owner to your proposal for them to organize a new corporation and take over the management of the park from Cempark after the latter is dissolved.**

3. Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes.[5]

   We opine that the management of a memorial park is a lawful purpose.

   Thus, if the lot owners agree with you and among themselves, then they may choose to incorporate a stock corporation and elect a board of directors to pursue such purpose.

It must be emphasized that the Commission expresses no opinion on the interpretation of contracts, or the contractual rights of parties involved. Any questions, or disputes relating thereto must be submitted to the courts that have exclusive jurisdiction on the matter.[6]

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[4] Corporation Code, Sections 122.
[5] Corporation Code, Sections 10.
[6] SEC Memorandum Circular No. 15, series of 2003 (16 December 2003).

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.

Vesper Julius B. Garcia
Officer-in-Charge