Binder

Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

29 August 2012
SEC-OGC Opinion No. 12-15
Effect of Merger on the
Condominium Certificate of Title

BDO Unibank, Inc.
BDO Corporate Center
7899 Makati Avenue
Makati City 0726

Attention: Angelita Ortega-Cortez
Senior Vice President-Legal Services Group
Marichelle Q. Gerardo
Manager 2-Legal Services Group

Dear Atty. Ortega-Cortez and Atty. Gerardo:

This refers to your request for a confirmation of your position, that BDO Unibank, Inc. (BDO Unibank) need not obtain a new Condominium Certificate of Title (CCT) registered under its name, as a prerequisite before the LV Locsin Condominium Corporation (LVLCC) could recognize BDO Unibank's ownership[1] over the condominium unit[2] and acknowledge BDO Unibank's membership in the condominium corporation.

Subject condominium unit was previously owned by Equitable PCI Bank Inc. (Equitable PCI), prior to the merger of BDO Unibank and Equitable PCI on 25 May 2007. Currently, CCT No. 8500 of the subject unit is registered in the name of Philippine Commercial International Bank (PCIB), the original owner, prior to the merger in July 1999 between PCIB and Equitable PCI.

Your request for opinion is closely linked with SEC-OGC Opinion No. 11-35, dated 12 August 2011 addressed to Salonga, Hernandez, & Mendoza, the counsel of LVLCC (LVLCC's Counsel) wherein it asked whether or not BDO Unibank, the surviving

[1] By issuing a certificate of membership in favor of BDO Unibank.
[2] With an area of 667.40 sg. meters located at the Podium level of the LV Locsin Condominium in Ayala corner Makati Avenues, Makati City.

corporation of the merger may be **automatically** considered as a member of the condominium corporation, pursuant to Section 80[3] of the Corporation Code. [4]

Essentially, your query is whether the submission of the Certificate of Merger to LVLCC is sufficient to acquire membership in the LVLCC, or whether the LVLCC can compel BDO Unibank to submit a Condominium Certificate of Title in its name as a condition *sine qua non* to admission and entitlement to the status of a full member of LVLCC.

We regret to inform you that we cannot give a categorical and/or definitive opinion on the matter, specially at this point that it is clear that this request is an offshoot of SEC-OGC Opinion No. 11-35, because as a matter of policy, the Commission refrains from rendering opinion where the resolution of the question(s) would involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.[5] Nor does the Commission render opinion on matters that would necessitate the determination of factual issues,[6] or that would necessarily require a review and interpretation of contracts, since this is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues,[7] or matters which clearly involve the exercise of business discretion or judgment which properly falls within the competence of the management of the entities concerned.[8]

However, for guidance and of information purposes only, please be apprised of the following.

---

[3] "SECTION 80. Effects of merger or consolidation. — The merger or consolidation shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and xxxxxx"

[4] Batas Pambansa No. 68 (1980).

[5] SEC Memorandum Circular No. 15, Series of 2003, par. 5.2.

[6] *Id.*, par. 5.8.

[7] *Id.*, par. 5.3.

[8] *Id.*, par. 5.9.

As stated above, Section 80 of the Corporation Code provides that one of the effects of merger is that all property, real and personal, of the absorbed corporation, are deemed transferred to and vested in the surviving corporation, which is BDO Unibank in this case.

Corollary to this is, Section 63 of the Corporation Code which provides that "No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred." In a Supreme Court case[9], the Court held that the import of this section is that,

> "xxxx a transfer of shares of stock not recorded in the stock and transfer book of the corporation [or membership in the membership books of a condominium corporation, as in this case] is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders.xxx Unless and until such recording is made the demand for the issuance of stock certificates to the alleged transferee has no legal basis."

While the transfer of the unit (and hence the transfer of membership in LVLCC) is valid, as between BDO Unibank and Equitable PCI without any further act or deed between the parties, the same may not be binding on LVLCC, the transfer being subject to registration in the membership books of LVLCC.

Also pertinent is Section 3, Article II of the By-Laws of LVLCC, which states:

> "Section 3. Certificates of Membership. — Each unit owner shall be issued a certificate of membership which shall be in such form as the Board of Director may determine and prescribe. It shall be signed by the President or Vice President and countersigned by the Secretary or an Assistant Secretary and sealed with the corporate seal.xxx
>
> A unit owner, upon the sale, transfer, conveyance or disposition of his unit, shall surrender to the Secretary for cancellation his certificate of

[9] Vicente C. Ponce vs. Alsons Cement Corp., *et al.* G.R. No. 139802 December 10, 2002.

membership. A new certificate shall thereupon be issued by the Secretary to the purchaser or transferee of the unit.

A member shall notify the Corporation of the loss, destruction or mutilation of his certificate of membership and the Board of Directors may cause to be issued to him a new certificate of membership upon the surrender of the mutilated certificate or in case of loss or destruction, upon satisfactory proof of such loss or destruction."

Further, Section 18 of the Condominium Act which provides:

"Sec. 18. Upon registration of an instrument conveying a condominium, the Register of Deeds shall, upon payment of the proper fees, enter and annotate the conveyance on the certificate of title covering the land included within the project and the transferee shall be entitled to the issuance of a 'condominium owner's' copy of the pertinent portion of such certificate of title. Said 'condominium owner's' copy need not reproduce the ownership status or series of transactions in force or annotated with respect to other condominiums in the project. A copy of the description of the land, a brief description of the condominium conveyed, name and personal circumstances of the condominium owner would be sufficient for purposes of the 'condominium owner's' copy of the certificate of title. No conveyance of condominiums or part thereof, subsequent to the original conveyance thereof from the owner of the project, shall be registered unless accompanied by a certificate of the management body of the project that such conveyance is in accordance with the provisions of the declaration of restrictions of such project." (Underscoring ours.)

In case of merger, the instrument that could prove conveyance of the condominium unit referred to in the phrase highlighted above is the Certificate of Merger.

We hope you find these information relevant to your query.

Very truly yours,

DAMIAN B. CORREA
General Counsel