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

OFFICE OF THE GENERAL COUNSEL

2 September 2013

SEC Opinion No. 13-09
Re: whether stockholders of a previously dissolved corporation whose shares are held in trust by another in a new corporation may be considered as individual subscribers of the latter corporation

Atty. Marilou M. Dulalas-Pascual
Legal Officer
PHINMA Properties Center
No. 29 EDSA, Mandaluyong City

Dear Atty. Dulalas-Pascual,

This refers to your *Letter*[1] requesting a confirmation from the Commission on whether PHINMA Property Holdings Corporation (New PPHC)[2] is considered a public corporation under law by virtue of its "reincorporation" with a stockholder holding shares in trust on behalf of 604 stockholders of a dissolved corporation. In your letter, you stated the following:

- Initially, PHINMA Property Holdings Corporation (Previous PPHC) was registered with the Commission on 29 March 1956;[3]
- The Previous PPHC is a result of several mergers with different corporations and has undertaken change of names through the years of its existence until it was finally named PHINMA Property Holdings Corporation;
- The Previous PPHC had more than 600 corporate as well as individual stockholders (for which reason it was considered a Public Corporation);
- The Previous PPHC's existence expired sometime in 2009 due to its inadvertence for failing to extend its 50 year corporate life;

[1] Dated 14 February 2011.
[2] SEC Registration No. CS-201019568.
[3] SEC Registration No. 15083.

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- The stockholders of the Previous PPHC had no intention to liquidate but intended that its regular business be continued;
- As a result thereof, the stockholders of the Previous Corporation representing 2/3 of its outstanding capital stock entered into a trust agreement on 25 November 2010 for the purpose of liquidating the assets of the Previous Corporation and investing the same in a reincorporated New PPHC;
- The New PPHC was reincorporated with individual stockholders on 3 December 20[10];[4]
- The Trustee of the Previous PPHC, representing all the stockholders of the Previous PPHC totaling more than 600, likewise subscribed to a total of 5,000,000,000 shares.

Upon a closer evaluation of the 2010 General Information Sheet (GIS) of the Previous PPHC, it reveals that there were 604 stockholders who subscribed thereto. Further, Article VIII of the Articles of Incorporation of the New PPHC indicates that there are 12 subscribers thereto including Willie J. Uy in trust for the 604 stockholders of the expired Previous PPHC holding 5,000,000,000 shares and again Willy J. Uy holding 1 share in his own name.[5]

The New PPHC is requesting for confirmation if it is a public corporation or "public company" by virtue of the 604 stockholders of the expired Previous PPHC who are subscribers of the New PPHC represented by Willy J. Uy.

The case of Philippine Veterans Bank v. Callangan is instructive. Here, the Supreme Court defined a "public company" as any corporation with a class of equity securities listed on an Exchange or with assets in excess of Fifty Million Pesos (Php 50,000,000.00) and having two hundred (200) or more HOLDERS, at least two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities.[6]

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[4] Certificate of Incorporation dated 3 December 2009.

[5] The following persons have subscribed to the new PPHC: **Willy J. Uy (in trust for the 604 stockholders of the previous expired PPHC)**, Oscar J. Hilado, Magdaleno B. Albarracin, Jr., Ramon R. del Rosario, Jr., Victor J. del Rosario, Roberto M. Laviña, Willy J. Uy, Jose Mari R. del Rosario, Eduardo A. Mendoza, Guillermo D. Luchangco, Bernardo M. Villegas and Pythagoras L. Brion, Jr.

[6] *Philippine Veterans Bank v. Callangan*, in her capacity as Director of the Corporation Finance Department of the Securities and Exchange Commission and/or the Securities and Exchange

A holder or stockholder includes a person holding stocks in trust[7] and trustees holding corporate stock are regarded for all legal purposes as stockholders.[8] However, the rights of a beneficial owner will, of course, be recognized and protected in equity in proper cases.[9] In other words, even where legal title to stock is vested in a certain person, equity will treat him as a trustee holding it for the real and beneficial owners, in a proper case.[10]

Article 1455 of the Civil Code provides that when any trustee uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong. Moreover, a trustee must not make investments of funds in their own names but always indicate that they are made in trust capacities.[11]

In which case, the 604 stockholders of the dissolved Previous PPHC are considered as stockholders of the New PPHC since a trust was established in their favor. Thus, it would appear that the New PPHC has more than 200 shareholders and is considered a "public company".

It is understood that the foregoing opinion is rendered based solely on the facts disclosed and described in the queries 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 or upon the courts, whether of similar or dissimilar circumstances.

Very truly yours,

CAMILO S. CORREA
General Counsel

Commission, G.R. No. 191995 (2011), citing Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC.

[7] 11 Fletcher Cyc Corp (Perm Ed), section 5085 [1976] p. 30, citing Bay State Distributing Corp. v. Doran, 33 F2d 782.

[8] *Id.*, p. 33, citing Bay State Distributing Corp. v. Doran, 33 F2d 782.

[9] *Id.*, p. 30, citing Clayton v. Smith, 131 Md 562, 102 A 925.

[10] *Id.*, p. 33, citing Clayton v. Smith, 131 Md 562, 102 A 925.

[11] Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES VOL. V. (1992), p. 682, Central Professional Books, Inc., Quezon City, citing Springfield Safe Deposit v. First Unitarian Society, 200 N.E. 641.