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

SEC-OGC Opinion No. 15-03
03 July 2015
Re: Alternative References of Stock Ownership Other Than the STB

MR. ZANDRO O. BABOL
Corporate Secretary
Golden Dragon International Terminals, Inc.
Osmeña St., San Nicolas
Baao, Camarines Sur

Sir:

This is in relation to your letter-request for opinion dated 25 February 2015 entitled *Request for Opinion on Matters of Stockholders and Stockholdings when the Stock and Transfer Book is Inaccessible* in relation to Golden Dragon International Terminals, Inc. (GDITI).

In your letter, you disclosed that upon your assumption of office as Corporate Secretary of GDITI, you were made aware of an on-going squabble for control of management of the company which has lasted for six (6) years and has resulted in the inaccessibility of some corporate records, including the stock and transfer book (STB). Further, you stated that in calling for the annual stockholders' meeting held on 21 March 2014, the corporation only used the 2013 General Information Sheet (GIS) as reference for the purpose of determining who are entitled to receive the notice of meeting. You further stated that the corporation will again call for an annual meeting this year as stipulated in its By-laws.

On your premise that the STB is inaccessible, you propound several queries, summarized as follows:

1. What alternative record/document of stockholders and their corresponding stockholdings could be the basis in determining whom to send notices of the meeting to?

2. Is personal knowledge of the Corporate Secretary sufficient basis in determining to whom to send notices?

3. Will the presentation of certificates of stock or duly notarized original copies of deeds of conveyance, assignment, transfer or sale of such shares of stock suffice to determine a quorum and call the meeting to order?

4. Is the recording of sales and transfer of shares of stocks in the STB considered valid when no Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR) is submitted?

A careful reading of your letter reveals that the queries you raised arise from an on-going intra-corporate dispute which is covered under Section 5(b) of Presidential Decree No. 902-A (P.D. 902-A), as amended, which reads:

> *"Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:*
>
> *xxx*
>
> *(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity.xxx"*

Kindly note that pursuant to the Securities Regulation Code (SRC), the Commission no longer has jurisdiction over intra-corporate disputes under Section 5 of P.D. 902-A, as the same has been transferred to the regular courts[1].

Further, it is the policy of the Commission to refrain from issuing opinions involving matters which may be or are the subject of an intra-corporate dispute pursuant to Section 5.2 of SEC memorandum Circular No. 15 Series of 2003 (MC 15-03) which states as follows:

> *"5. As a matter of policy, the Commission shall refrain from rendering an opinion in the following:*
>
> *5.1 xxx*
> *5.2 Matters which involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court of the opinion turns out to be adverse to their interest.xxx"*

Be that as it may, for purposes of information only, the following are imparted.

Section 74 of B.P. 68 or the "Corporation Code of the Philippines" (Corporation Code) provides as follows:

---

[1] *GSIS v. Rosete*, G.R. No. 183905, 16 September 2009.

"*Section. 74.* Books to be kept; stock transfer agent. - xxx

Stock corporations must also keep a book to be known as the "stock and transfer book", in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.xxx"

The significance of the STB in the determination of stockholder status is apparent in the application of Section 50 of the Corporation Code which makes it mandatory for the corporation to issue a notice of meeting to stockholders two (2) weeks before the date of the annual stockholders' meeting. Said provision reads:

"*Section 50.* ***Regular and special meetings of stockholders or members.*** - Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, that written notice of regular meetings shall be sent to all **stockholders or members of record** at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws." (emphasis ours.)

The right to receive notice of meeting is a right afforded only to the stockholders of record of the corporation. The status of being a stockholder of record is determined by the stock and transfer book (STB). "To determine who are the present stockholders of a corporation, much would depend on the identities of the stockholders as appearing in the STB of the corporation which is the best evidence to show the present stock ownerships."[3]

Given the significance of the STB in the determination of stockholder status, the courts, in various cases, have discussed which sources may serve as alternative references in determining stock ownership only in cases where the STB is lost or destroyed. In *Lanuza v. Court of Appeals,*[4] the High Court held that parol evidence may be admitted to supply omissions in the corporate records. Likewise, this Commission previously opined that while the STB is the best evidence of stock ownership, it is not an exclusive evidence on matters and things written therein. Extrinsic or secondary evidence may be admitted. Proper foundation/proof, however, explaining why the STB should not be relied on must first be laid for the introduction of other evidence[5]. Such secondary evidence ordinarily consists of copies of the records, either certified or sworn to, or parol testimony. (Fletcher, sec. 2197, at 648).

---

[3] SEC Opinion dated 23 May 1993 addressed to Mr. Victor Africa; SEC Opinion dated 01 February 1989 addressed to Mr. Eli C. Busa.
[4] 454 SCRA 54 (2005)
[5] SEC Opinion dated 23 May 1993 addressed to Mr. Victor Africa.

Apropos thereto, Rule 130 of our Rules of Court reads:

> "*Section 4.* Secondary evidence when original is lost or destroyed. — When the original writing has been lost, destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic documents or by the recollection of witnesses."

Accordingly, when the original stock and transfer books of a corporation has been lost or destroyed, secondary or extrinsic evidence may be introduced to reconstitute its contents."[6] (emphasis ours.)

It should be emphasized that the STB is the quintessential record of all stockholders and their corresponding stockholdings in the corporation. Only in the event that the said STB is lost or destroyed should the corporation resort to gathering extrinsic evidence or parol evidence of stock ownership following the general rules on the presentation of secondary evidence.

It is the responsibility of the Corporate Secretary to serve as the custodian of corporate records and to keep the STB, as well as making proper and necessary entries therein.[12] Hence, the Commission urges you as Corporate Secretary of GDITI to take the necessary measures to make the STB accessible, including filing a case in court to gain access to and assume custody of the STB, or have the same reconstituted if appropriate, as in cases where the STB is lost or destroyed, so that proper entries therein can be made.

As to the validity of the recording of sales and transfer of shares of stocks in the STB when no CAR from the BIR is submitted, it should be noted that the Commission is not the agency in charge of the implementation of Section 11 of Revenue Regulation No. 06-08 as clarified by Revenue Memorandum Circular No. 37-2012 requiring the issuance of a Certificate Authorizing Registration (CAR). However, for purposes of discussion, said provision states that –

> "*Section 11.* Effect of Non-Payment of Tax. – **No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock shall be registered in the books of the corporation unless the receipts of payment of the tax herein imposed is filed with and recorded by the stock transfer agent of secretary of the corporation.** It shall be the duty of the aforesaid persons to inform the Bureau of Internal Revenue in case of non-payment of tax. Any stock transfer agent or secretary of the corporation of the stockbroker, who caused the registration of transfer of ownership or title on any share of stock in violation of the aforementioned requirements shall be punished in accordance with the provisions of Title X, Chapters I and II of the Tax Code, as amended." (emphasis ours)

---

[6] SEC Opinion, 12 January 1994, XXVIII SEC Quarterly Bulletin 33 (No. 2, June 1994)
[12] Torres v. Court of Appeals, 278 SCRA 793 (1997)

Differently stated, the above-quoted provides that the recording of sales and transfer of shares of stock in the STB without presenting or submitting the CAR from the Bureau of Internal Revenue (BIR) to the Corporate Secretary or other transfer agent is not valid. Hence, in the same vein, to be proof of being a stockholder of record, the presentation of documents evidencing sales and transfer of shares of stocks should be made together with the CAR.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.[13] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

CAMILO S. CORREA
General Counsel

[13] SEC Memorandum Circular 2003-15 (No. 7).