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

OFFICE OF THE GENERAL COUNSEL

21 July 2015
SEC-OGC Opinion No. 15-07
Re: Corporate Liquidation

ATTY. NILO L. GEONZON
GEONZON LAW OFFICE
No.35 Narra St., Northview Homes Subdivision
Batasan Hills, Quezon City

Sir:

This is in response to your letter, dated 18 August 2014, pertaining to the corporate liquidation of the defunct Roxas Colleges, Inc. (RCI).

As stated in your letter, RCI was a private educational institution registered with the Commission on 24 July 1950. Sometime in 1999, RCI was left unattended until its corporate existence has expired on July 24, 2000. After its legal dissolution, RCI ceased operation and left its school campus idle for a long time. A 2.6396 hectare of land is the only tangible asset left by RCI as its buildings, facilities and improvements were destroyed. Except for some copies of its Certificate of Registration, Articles of Incorporation and a General Information Sheet, all other corporate records were either lost or destroyed. In 2010, Arnulfo Sison, the Chairman of the Board and the school President, died. He was survived by his wife Estela Sison, a member of the Board and the remaining majority stockholder of the RCI. Since Estela Sison could no longer personally perform the rigors of liquidation due to old age, she decided to appoint her two children - Vicente P. Sison and Buenaflor S. Yason to act as Trustee/Liquidators for the benefit of the stockholders.

The queries raised in your letter are as follows:

1. Whether or not Estela Sison, a member of the Board and the remaining majority stockholder, can legally initiate corporate liquidation of the defunct RCI beyond the winding up period where no trustees were designated?

2. Whether or not the children who are appointed by Estela Sison are qualified to act as Trustees for purposes of liquidation?

3. Whether or not the said Trustees can sell or dispose of the remaining asset of the defunct RCI consisting of a parcel of land covered by OCT No. RO-160 (319), for the purpose of liquidation?

4. Whether or not the certificate of title of the defunct corporation's real asset covered by OCT No. RO-160 (319) may be registered in the name of the appointed Trustees for the purpose of liquidation?

Please be advised that the Commission does not, as a matter of settled policy, render categorical opinions on litigious issues which may eventually be litigated in the future in an intra-corporate[1] and/or civil case such as matters which 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, and on matters which would necessarily require a review and interpretation of contracts or an opinion on the validity of contracts since interpretation of contracts is justiciable in nature and contract review calls for legal examination of contract on a general legal basis and not on specific legal issues.[2]

Also, please find instructive the case of *Consuelo Metal Corporation v. Planters Development Bank*[3], to wit:

> "However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of a corporation, **jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts**."
>
> (Emphasis and underscoring supplied)

Hence, we are constrained from categorically answering your queries. However, for purposes of information only, we impart the following:

Section 122 of the Corporation Code provides:

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[1] Pursuant to Section 5.2 of the Securities Regulation Code (SRC), the Commission's jurisdiction over all intra-corporate disputes under Section 5 of Presidential Decree No. 902-A has been transferred to the courts of general jurisdiction or the appropriate Regional Trial Courts.
[2] SEC Memorandum Circular No. 15, Series of 2003
[3] G.R. No. 152580, June 26, 2008

Section 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, the 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.

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As to your first and second queries, it has been opined that:

"**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.** (emphasis ours)xxx

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. In other words, **when one or more directors die, the surviving trustees take the whole title subject to the trust, 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.**

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."[4]

While Section 122 of the Corporation Code gives a dissolved corporation three (3) years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period. Following the *SEC Commission En Bane decision in the case of Northern Luzon Transportation Inc. Isabela Cultural Corporation, petitioner, SECAC No. 347 October* 7, 1991, quoted in part hereunder:

> Section 122 simply means that after the expiration of the three-year winding-up period, pending actions by or against the dissolved corporation are abated. Section 122 should not, however, be construed to prevent a corporation from pursuing activities which would complete the final liquidation of a dissolved corporation. In this case, Northern Luzon Corporation Inc. which term has long expired, was unable to dispose of its remaining assets even during the three-year period granted it by Section 122. Accordingly, it should be allowed to continue liquidating its remaining assets in order to complete the process of dissolving the corporation. Likewise, it should be allowed to distribute the proceeds from said disposition to its stockholders or creditors if any. A contrary interpretation would have unjust and absurd results.[5]

Previously, the Commission has opined:

> In your case, it appears that the expired corporation has not completed its liquidation and there are numerous real properties still under its name. The obligation to dispose of the said real properties, through sale or other mode of assignment, in order to fully liquidate the corporation falls upon the directors of the said expired corporation so that all proceeds from the sale or assignment of the properties shall be divided accordingly among all those with remaining interest in the said expired corporation. [6]

As to your third and fourth queries, under the second paragraph of Section 122 of the Corporation Code, upon the appointment of a trustee, legal title over corporate property passes to the trustee. Hence, the trustee, having legal title over the property of the corporation and acting as liquidator, has the duty to possess and dispose the properties of the defunct corporation for the benefit of the stockholders, creditors or other persons in interest, in accordance with the liquidation plan.

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[4] SEC-OGC Opinion No. 14-29 dated 22 October 2014 addressed to Ms. Theresita M. Ceralde, citing Clemente v. CA, G.R. No. 82407 March 27, 1995, and SEC-OGC Opinion No. 10-06 dated 29 January 2010 addressed to Chato & Vinzons-Chato

[5] SEC Opinion No. 33-03 dated 14 May 1996 addressed to Atty. Nita G. Untalan; SEC-OGC Opinion No. 09-31 dated 9 December 2009 addressed to Ms. Liza Bautista; SEC-OGC Opinion No. 14-22 dated 8 August 2014 addressed to Mr. Manuel T. Hing

[6] SEC-OGC Opinion No. 14-29, 22 October 2014 addressed to Ms. Theresita M. Ceralde

Lastly, it should be emphasized that under the existing law, the approval of this Commission is not required in the distribution or liquidation of assets. There is nothing in Section 122 of the Corporation Code which requires this Commission's approval of distribution or liquidation of assets of a dissolved corporation. The same is a matter of internal concern of the corporation and falls within the power of the directors and stockholders or duly appointed liquidation trustee.[7] However, should there be substantial issues, the same may be brought to court, pursuant to the *Consuelo Metal* case afore-mentioned.

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.[8] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

CAMILO S. CORREA
General Counsel

[7] SEC-OGC Opinion No. 14-22 dated 8 August 2014 addressed to Manuel T. Hing
[8] SEC Memorandum Circular 2003-15, No. 7