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

OFFICE OF THE GENERAL COUNSEL

27 August 2015

SEC-OGC Opinion No. 15-09
Re: Liquidation of Non-Stock Corporation

LETICIA M. CORONEL
Member-Trustee
CORAZON S. MACEDA FOUNDATION FOR MUSIC EDUCATION, INC.
2047 M. Layug St., San Manuel Village
Makati City

Madam:

This pertains to your letter, dated 11 March 2015, requesting for legal opinion regarding the liquidation of Corazon S. Maceda Foundation for Music Education, Inc. (CSM Foundation).

In your letter, you stated that CSM Foundation was incorporated on 29 July 1999 as a non-stock, non-profit corporation, for the purpose of promoting music education. Since its incorporation, CSM Foundation has not been able to fully pursue the purpose for which it was incorporated. Its Certificate of Registration has been revoked on 1 December 2005 for failure to submit the General Information Sheet and Financial Statement for the years 2000 to 2004. The Trustees have decided not to contest the revocation, and proceed outright to liquidation proceedings, with a view of paying any and all obligations it may have incurred, as assessed by the government authorities, and distributing any and all remaining properties of CSM Foundation to other non-stock, non-profit and charitable corporations and/or associations engaged in activities similar to the purposes for which CSM Foundation had been incorporated, consisting of the following: (a) School of Music, Philippine Women's University; (b) Philippine Society for Music Education; and (c) Cartwheel Foundation, Inc. As CSM Foundation had been non-operational, it had not incurred any obligations or debts to any private entities. The properties under its name consist solely of cash and investments held in bank accounts. There is no provision in the Articles of Incorporation or By-laws providing for the distributive rights of Members, nor identifying any beneficiaries entitled to the assets to be distributed in case of dissolution and liquidation.

Thus, you raised the following queries:

1. Given that CSM Foundation's registration has already been revoked, and there are no known creditors, may it immediately proceed to corporate liquidation proceedings?

2. As three (3) years have already expired since the revocation of CSM Foundation's registration (the period of December 1, 2005 to the present) without liquidation proceedings having been commenced, and given that none of the corporation's properties have been assigned to a Trustee in Liquidation within such period, may the present Board of Trustees act as Trustees by Legal Implication who would then be empowered to commence and carry out corporate liquidation proceeding, including settling all the affairs of the corporation, paying any debts and obligations, and distributing any of its remaining assets?

3. The Articles of Incorporation of CSM Foundation provide six (6) board seats, and there are presently four (4) living Members-Trustees, one of whom is incapacitated due to sickness; may the three (3) surviving and capacitated Trustees act as Trustees by Legal implication; or would the remaining three (3) capacitated living trustees need to appoint an additional Trustee in order to establish a quorum, for the special purpose of pursuing liquidation proceeding?

4. As the Articles of Incorporation do not provide for distributive rights of Members or identify any beneficiaries in case of liquidation, may the Trustee by Legal Implication draft a Plan of Distribution appointing the beneficiaries mentioned above, all of which are non stock and non-profit corporations or organizations pursuing similar purpose/s as that of CSM Foundation?

Please be advised that the Commission does not, as a matter of settled policy, render categorical opinions on issues which may potentially 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]

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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

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:

The pertinent provision of law on corporate liquidation is provided in Section 122 of BP Blg. 68, otherwise known as the Corporation Code of the Philippines, which provides as follows:

> Sec. 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.
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> xxx (Emphasis supplied)

In other words, the Corporation Code provides that a corporation whose corporate franchise has been revoked continues as a body corporate for three (3) years after the issuance of the revocation order but only for purposes of liquidation.[4]

Once a corporate franchise is revoked, the corporation is dissolved. **Dissolution** is a condition of law and fact which ends the capacity of the body corporate to act as such, and **necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate enterprise**.[5](Emphasis and underscoring supplied)

Be informed also 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**

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[3] G.R. No. 152580, June 26, 2008
[4] SEC-OGC Opinion No. 09-24 dated 28 July 2009 addressed to Esguerra & Blanco Law Offices
[5] *Ibid*

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.**"[6]

Upon the dissolution of a non-stock corporation, corporate assets can be applied and distributed in accordance with certain specific rules laid down in Section 94 of the Corporation Code or as may be specified in a plan of distribution adopted by the corporation in accordance with Section 95[7] of the Code.[8]

Section 94 of the Corporation Code provides:

Section 94. *Rules of distribution.* – In case dissolution of a non-stock corporation in accordance with the provisions of this Code, its assets shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

2. Assets held by the corporation upon a condition requiring return, transfer or conveyance, and which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance

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[6] 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

[7] **Section 95.** *Plan of distribution of assets.* – A plan providing for the distribution of assets, not inconsistent with the provisions of this Title, may be adopted by a non-stock corporation in the process of dissolution in the following manner:

The board of trustees shall, by majority vote, adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a regular or special meeting of members having voting rights. Written notice setting forth the proposed plan of distribution or a summary thereof and the date, time and place of such meeting shall be given to each member entitled to vote, within the time and in the manner provided in this Code for the giving of notice of meetings to members. Such plan of distribution shall be adopted upon approval of at least two-thirds (2/3) of the members having voting rights present or represented by proxy at such meeting

[8] De Leon, De Leon, Jr., *The Corporation Code of the Philippines (Annotated)*, 10th Edition, 2010, p.694

> by reason of the dissolution, shall be transferred or conveyed to one or more corporations, societies or organizations engaged in activities in the Philippines substantially similar to those of the dissolving corporation according to a plan of distribution adopted pursuant to this Chapter;
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> 4. Assets other than those mentioned in the preceding paragraphs, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws, to the extent that the articles of incorporation or the by-laws, determine the distributive rights of members, or any class or classes of members, or provide for distribution; and
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> 5. In any other case, assets may be distributed to such persons, societies, organizations or corporations, whether or not organized for profit, as may be specified in a plan of distribution adopted pursuant to this Chapter.

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.[9] However, should there be substantial issues, the same may be brought to court, pursuant to the *Consuelo Metal* case aforementioned.

We hope the foregoing discussion has provided you sufficient guidance in resolving your concerns.

By the Authority of the Commission:

CAMILO S. CORREA
General Counsel

[9] SEC-OGC Opinion No. 14-22 dated 8 August 2014 addressed to Manuel T. Hing