Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

05 September 2017

SEC-OGC Opinion No. 17-08

Re: Revocation and Re-Registration of a Corporation

LEONARDO P. VALMONTE
Prestige Native Arts, Inc.
2629 Conchu St.
Sta. Ana, Manila

Sir;

This refers to your letter dated 30 May 2017, requesting for a legal opinion on the matter of a revoked and re-registered corporation.

In your letter, you stated that Prestige Native Arts, Inc. ("PNA") is a family stock corporation registered with the Commission in 1974. For failure to comply with the reportorial requirements, its Certification of Registration was revoked, per SEC Order of July 2, 2003. Moreover, PNA failed to file a Petition to Lift Revocation Order on time, hence, said Order has become final.

You also stated that on September 27, 2010, however, PNA re-registered and was given a new company Registration Number, CS201015603. While PNA's number of directors and authorized capital stock decreased, its name, primary purpose and principal office address remain the same.

Thus, you posit the following queries:

1. Did the Commission's revocation of PNA Certificate of Registration extinguish the corporation's right of dominion over its corporate assets consisting of real and personal properties?
   a. If in the affirmative, what action may the corporation take to regain and maintain its right of ownership over its corporate asset to enable it to sell and dispose said properties?

b. May the corporation continue as a body corporate for three (3) years after dissolution caused by the Commission's revocation to dispose of and convey its proper ties to trustees and to distribute its assets but not to do business?

2. Is the original PNA corporation organized in 1974 and the new corporation which was re-registered in 2010, one and the same corporation having the same name, primary purpose and office address?

3. How do the Commission classify the re-registered corporation, is it a newly registered corporation or is it the same old corporation?

As to your first question, the PNA's right of dominion over its corporate assets is **not immediately extinguished** by the revocation of its Certificate of Registration.

Section 122 of the Corporation Code provides:

> *Every corporation whose charter expires by its own limitations 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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> *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.*
>
> *Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.*
>
> *Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.*

As the Supreme Court held in *Republic vs. Tancinco*[1], "the dissolution of juridical entity does not by itself cause the extinction or diminution of the rights and liability of such entity, since it is allowed to continue as a juridical entity for 3 years for the purpose of prosecution

[1] G.R No. 139256, 27 December 2002.

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."

Further, corporate liquidation may still be continued even after expiration of the given three (3) year period. As we previously opined:

> "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 Banc decision in the case of Northern Luzon Transportation Inc. Isabela Cultural Corporation, petitioner, SEC AC No. 347 October 7, 1991, quoted in part hereunder:
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> > "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 to 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."[2]

Hence, the former corporation retains title to the corporate properties until after the completion of the liquidation process.

As to your second query, the original PNA corporation organized in 1974 is **separate and distinct** from the one registered in 2010, and the former cannot be said to be a continuation of the latter.

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.[3] Once a corporate franchise is revoked, the corporate franchise is dissolved.

Coming now to your third query, the re-registered corporation is a **newly registered corporation**.

Memorandum Circular No. 21, series of 2013,[4] states:

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[2] SEC-OGC Opinion No.14-22 dated 08 August 2014 addressed to Manuel T. Hing.
[3] SEC-OGC Opinion No. 09-24 dated 28 July 2009 addressed to Esguerra & Blanco Law Offices
[4] Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names

"Upon approval of the re-registration, the certificate of registration to be issued to the new corporation shall indicate its new SEC registration number and pre-generated Tax Identification Number (TIN) as confirmation that the same is a separate and distinct entity from the dissolved or revoked corporation."

Further, even the latest amendment[5] to the said Memorandum Circular echoes the separate and distinct status of the dissolved corporation from the re-registered corporation.

Thus, it is clear that the re-registered corporation shall be considered as a separate and distinct entity from the corporation with a similar name that preceded it.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue 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 similar or dissimilar circumstances.[6] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[5] Memorandum Circular No.6, series of 2015
"xxx xxx xxx

15. The name of a corporation or partnership that has been dissolved or whose registration has been revoked shall not be used by another corporation, except in meritorious cases as determined by the Commission En Banc.

Only expired corporations may apply for re-registration using the same corporate name. xxx

xxx xxx xxx

Upon approval of the re-registration, the certificate of registration to be issued to the new corporation shall indicate its new SEC registration number and pre-generated Tax Identification Number (TIN) as confirmation that the same is a separate and distinct entity from the expired corporation."

[6] SEC Memorandum Circular No.15, Series of 2003