Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

04 June 2018

SEC-OGC Opinion No. 18-09
RE: Legal Capacity of a Dissolved Corporation in Corporate Liquidation

ATTY. RICARDO B. FELIX
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Dear Atty. Felix:

This refers to your letter dated 10 January 2018 requesting from the Commission an opinion on the legal capacity of a dissolved corporation to institute and file actions in court and other appropriate fora for the recovery and disposition of its properties during liquidation.

According to your letter, H & E Realty Corporation Inc. (H&E) is a domestic corporation organized and existing under Philippine laws, whose registration has been revoked by the Commission due to its failure to submit the General Information Sheet and other requirements. You also mentioned that H&E has already ceased its operation even prior to the revocation of its registration.

Further, you averred that H&E is presently winding up its affairs including the institution of legal action in courts for the disposal of the properties registered under its name. You also disclosed that in one case instituted by H&E, the Regional Trial Court of Parañaque City dismissed the same on the ground that the corporation has no legal personality and standing to institute the case because of the revocation of its registration by the Commission.

Now, you seek before the Commission an opinion on the legal standing and personality of H&E to institute and file actions in court and other appropriate fora for the recovery and disposition of its properties during liquidation.

We regret to inform you that the Commission in this case cannot answer your query as it may involve an examination and review of the ruling of the Regional Trial Court of Parañaque City. Please note that as a matter of policy, the Commission refrains from rendering an opinion on matters which would require an examination and review of the acts and rulings of another government agency, [1] more so, the judiciary.

However, for purposes of information only, we impart the following information.

[T]here is, as a general rule, no juridical personality after dissolution. If there is, it is only a juridical personality to serve but one purpose-for all transactions pertaining to liquidation, culminating in the disposition and distribution of the dissolved corporation's remaining assets. Any matter entered into that is not for the purpose of liquidation will be a void transaction because of the non-existence of the corporate party.[2]

Section 122 of the Corporation Code gives the dissolved or revoked corporation a three-year period within which to wind up its affairs, to wit:

> "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.
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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." (Emphasis and underscoring supplied).

Based on the provision, a corporation, whose registration has been revoked, **has three years from dissolution to continue to be a body corporate but only for purposes of winding up its affairs.** Specifically, these actions should be for the purpose of (1) prosecuting and defending suits by or against it and enabling the dissolved Corporation to

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[1] SEC Memorandum Circular No. 15 series of 2003, No. 5.6

[2] SEC Opinion No. 09-31, dated 09 December 2009, addressed to Ms. Liza G. Bautista *citing* SEC Opinion No. 33-03 dated 16 June 2003 addressed to Atty. Teresita A.M. Villaruz.

settle and close its affairs, (2) to dispose and convey its property, (3) and to distribute the corporate assets.

In the 2014 case of *Alabang Development Corporation vs. Alabang Hills Village Association and Rafael Tinio*[3], the Supreme Court ruled that the Alabang Development Corporation (ADC) lacked the legal capacity to sue as a corporation when it filed a case more than three years after its certificate of registration has been revoked, to wit:

> In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26. 2003. Based on the above-quoted provision of law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation. **It is likewise not disputed that the subject complaint was *filed by petitioner corporation*, and not by its directors or trustees. In fact, it is even averred, albeit wrongly, in the first paragraph of the Complaint that *"[p]laintiff is a duly organized and existing corporation under the laws of the Philippines, with capacity to sue and be sued.*** xxx"
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> In the present case, **petitioner [ADC] filed its complaint not only after its corporate existence was terminated *but also beyond the three-year period allowed by Section 122* of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation.** To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code." (Emphasis and underscoring supplied).

Thus, the defunct corporation cannot, by itself, institute an action in court and represent that it is an organized and existing corporation under Philippine laws with capacity to sue, beyond the 3-year period provided under Section 122.

However, there are instances wherein an action in court may be brought for the benefit of the defunct corporation even beyond the 3-year period. The Supreme Court, in *Reburiano and Reburiano vs Court of Appeals,*[4] elucidated on this, to wit:

> "It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the

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[3] *Alabang Development Corporation vs Alabang Hills Village Association and Rafael Tinio*, G.R. No. 187456, 02 June 2014
[4] *Reburiano and Reburiano v. Court of Appeals and Pepsi Cola Bottling Company of the Philippines, Inc.*, G.R. No. 102965, 21 January 1999.

> period of dissolution commences; **but there is no time limit within which the trustees must complete a liquidation placed in their hands.** It is provided only (Corp. Law, Sec 78 now Sec. 122]) that **the conveyance to the trustees must be made within the three-year period.** It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued (17 R.C.L., Corps., par. 750); **but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such in all matters connected with the liquidation."**[5] (Emphasis and underscoring supplied).

This is a reiteration of the point made in *Sumera vs. Valencia,*[6] wherein the Supreme Court ruled that, "if the corporation carries out the liquidation of its assets through its own officers and continues and defends the action brought by or against it, its existence shall terminate at the end of three years from the time of dissolution, **but if a receiver or assignee is appointed, as has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested person; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the offices of the corporation."** (Emphasis and underscoring supplied).

Thus, the Commission, in SEC-OGC Opinion No. 03-33, clarified that the three-year limitation period will not apply provided there is a trustee designated in accordance with the second paragraph of Section 122, to wit:

> In such cases, [par. 2 of Section 122] the three year limitation period will not apply provided the designation of the trustee is made within said period. Unless the trusteeship is limited in its duration by the deed of trust, there is no time limit by which the trustee must finish liquidation, and he may sue or be sued even beyond the three year period. (Villanueva, Philippine Corporate Law, p 690.)[7]

Further, in *Clemente, et al. vs Court of Appeals*[8], the Supreme Court held that:

> "The corporation continues to be a body corporate for three (3) years after its dissolution for purposes of prosecuting and defending suits by and against it and for enabling it to settle and close its affairs,

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[5] *Reburiano v. CA, citing Sumera v. Valencia, further citing Justice Fisher, The Philippine Law of Stock Corporations.*
[6] *Sumera v. Valencia*, G.R. No. 45485, 03 May 1939.
[7] SEC Opinion No. 33-03 dated 16 June 2003 addressed to Atty. Teresita A.M. Villaruz.
[8] G.R. No. 82407, 27 March 1995.

culminating in the disposition and distribution of its remaining assets. **It may, during the three-year term, appoint a trustee or a receiver who may act beyond that period.** The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity (see *Gonzales vs. Sugar Regulatory Administration*, 174 SCRA 377) nor those of its owners and creditors. **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.** ***Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and its behalf, might make proper representations with the Securities and Exchange Commission (now the courts)***, which has primary and sufficiently broad jurisdiction in matters of this nature, ***for working out a final settlement of the corporate concerns.***" (emphasis and underscoring supplied)

Please be guided accordingly.

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