Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

08 May 2019

SEC-OGC Opinion No.19-18
Re: Term of Existence of Condominium Corporations

MONTEPINO BAGUIO CONDOMINIUM CORPORATION
Suite 605 Cattleya Condominium Building
235 Salcedo Street
Legaspi Village, Makati City

ATTENTION: MR. VENANCIO GUTIERREZ

Sir:

This refers to your letter dated 21 January 2014 requesting confirmation of the following, to wit:

1. That Montepino Baguio Condominium Corporation (MBCC) ceased to exist upon the destruction of the Condominium Project and the successful sale of all its assets; and

2. That Sections 117 to 121 of the Corporation Code, now Sections 133 to 138 of the Revised Corporation Code (the "RCC"), on dissolution is not applicable to MBCC and that it may now proceed to liquidation under Section 122, now Section 139 of the RCC.

At the outset, you stated in your letter that the condominium project owned and/or held by MBCC is named "Montepino Baguio Condominium Projects". However, MBCC's Articles of Incorporation shows the name of "Montepino Baguio Condominium Apartments" (the "Apartments") as the subject condominium project.

In your letter and in the court decision ("*Decision*") attached therein, it is represented that MBCC is a non-stock, non-profit corporation registered with the Commission and organized for the sole purpose of owning and/or holding the title to the common areas of the Apartments, under the Condominium Act (the "Condo Act")[1].

It is further stated that on 16 July 1990, the Apartments was heavily destroyed by an earthquake and more than one-half (1/2) of the project was severely damaged, hence the

[1] Republic Act No. 4726.

entire edifice became untenantable. The unit owners then convened in a special meeting and in a Resolution dated 15 January 1992, resolved: (1) not to repair the damage anymore, (2) to terminate the condominium project, (3) to sell all the assets of MBCC, and (4) distribute the proceeds of the sale among the various unit owners in accordance with their interests as provided for in the Master Deed and/or other related documents. The Board of Directors was likewise authorized and mandated to execute the necessary Resolution.

Subsequently, MBCC filed an action for partition (the "*Petition*") with the Regional Trial Court. Having no opposition filed against the *Petition*, the case was resolved and a decision dated 31 January 1997 was issued granting the *Petition* which has long become final. You further stated that any remaining damaged structures have been torn down because they caused a danger to the neighboring properties, should they fall; so that, only the lands wherein the Apartments had been constructed and/or which were being used by the owners and owned by MBCC, remained. Further, on 04 September 2013, these lands were sold to a third person.

Hence, this query.

FIRST QUERY

It is worth noting that MBCC is a condominium corporation duly established pursuant to the provisions of the Condo Act, Section 11 of which provides:

> "The term of a condominium corporation shall be co-terminus with the duration of the corporation project, the provisions of the Corporation Law to the contrary notwithstanding."

In this connection, MBCC'S Articles of Incorporation provided that:

> "Fourth. – The Term of the Corporation shall be co-terminus with the duration of the Montepino Condominium Apartments."

To ascertain the intent of the legislature when the Condo Act was crafted, instructive is the deliberations that led to the enactment of the said law. During the second reading of the said Act, then Senate Bill No, 162, held on 13 May 1966, the following are the discussions recorded:

> "Senator Osias: Mr. President, before we move into the period of amendments, I should like certain clarifications to be made. What is the period described for the duration of the condominium corporations?
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> Senator Manglapus: There is no limit. This is with reference to the holding of real property by private persons even with the medium of a corporation. There is no limit, otherwise, the stability of the right of the person would be disturbed.
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> Senator Osias: Section 11 on page 8 reads:

> "Section 11. The term of a condominium corporation shall be coterminous with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding."

And this connotes certain provisions of the present Corporation Law to be nullified or disregarded. What particular important provision... I don't know.

Senator Manglapus: Well, the duration of time, the time limit for the business of the corporation, a 50-year period.

Senator Osias: Fifty-year period?

Senator Manglapus: Yes.

Senator Osias: Now, I was somewhat responsible for the amendment of the Corporation Law in the Fifth Congress providing for an easier way of lengthening the period or the duration of a given corporation. How could the condominium corporation enjoy the benefits of that amendment which was approved?

Senator Manglapus: If this section is untouched if this bill is passed, there would be no need for the condominium corporation to take advantage of any existing law since we would permit the condominium corporation to exist as long as the project exists, and that means under Section 13, a certain thing might come in, like damage or destruction, which will necessitate the dissolution of the joint ownership of the corporation."

From the foregoing, it would appear that the framers of the Condo Act did not put a limit on the term of a condominium corporation to promote stability of property rights. The law permits the condominium corporation to exist as long as the project exists despite the term limit set in the Corporation Law effective during that time.

One of the modes provided by the Condo Act to terminate a condominium project, *vis-à-vis*, dissolution of a condominium corporation pursuant to Section 11, is Section 8, provides that:

> "Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were co-owners of the entire project in the same proportion as their interests in the common areas: Provided, however, That a partition shall be made only upon a showing:
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> (a) That three years after damage or destruction to the project which renders material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) That damage or destruction to the project has rendered one-half or more of the units therein untenantable and that condominium owners holding in aggregate more than thirty percent interest in the common areas are opposed to repair or restoration of the project; or

(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration or remodeling or modernizing of the project; or

(d) That the project or material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners' holdings in aggregate more than seventy percent interest in the common areas are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

(e) That the conditions for such partition by sale set forth in the declaration of restrictions, duly registered in accordance with the terms of this Act, have been met."

As you narrated, when the Apartments was heavily destroyed by an earthquake, more than ½ of the said project was severely damaged rendering it untenantable. While the specific percentage of who voted against the repair or restoration of the project was not stated in your letter and in the *Decision*, given that no opposition was filed against the *Petition*, it appears that the condominium owners aggregately holding more than 30% interest in the common areas were opposed to the repair or restoration of the project.

Thus, the Apartments was terminated when the *Decision* granting the *Petition* attained finality. Consequently, MBCC was dissolved, pursuant to Section 8(b), in relation to Section 11 of the Condo Act.

SECOND QUERY

As to your second query, it is worth emphasizing that the Condo Act is a special law while the RCC is a general law the provisions of which apply to ordinary corporations.

The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must be taken as intended to constitute an exception to the general act.[2]

Relatedly, the Condo Act already provides for the modes of dissolution of a condominium corporation. In fact, MBCC has been dissolved pursuant to Section 8(b), in

[2] Vinzons-Chato vs. Fortune Tobacco Corporation, G.R. No. 141309, 19 June 2007.

relation to Section 11, thereof. Thus, the RCC's provisions on dissolution of ordinary corporations (Sections 133 to 138) are not applicable to MBCC.

As to the applicability of Section 139 of the RCC on corporate liquidation to MBCC, the following provisions of the Condo Act on dissolution and liquidation should be considered:

> "Section 12. In case of involuntary dissolution of a condominium corporation for any of the causes provided by law, the common areas owned or held by the corporation shall, by way of liquidation, be transferred pro-indiviso and in proportion to their interest in the corporation to the members or stockholders thereof, subject to the superior rights of the corporation creditors. **Such transfer or conveyance shall be deemed to be full liquidation of the interest of such members or stockholders in the corporation.** xxx
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> Section 15. Unless otherwise provided for in the declaration of restrictions, upon voluntary dissolution of a condominium corporation in accordance with the provisions of Section 13 and 14 of this Act, the corporation shall be deemed to hold a power of attorney from all the members or stockholders to sell and dispose of their separate interest in the project and **liquidation of the corporation shall be effected by the sale of the entire project as if the corporation owned the whole thereof,** subject to the rights of the corporation and of individual condominium creditors."

Applying the doctrine of harmonious construction[3], MBCC's liquidation has already been effected from the moment the remaining lands of the condominium project were entirely sold to a third person. Notwithstanding the foregoing, however, Section 139 of the RCC, being the general law governing corporations, applies suppletorily.

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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[4]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[3] A rule of statutory construction is that a statute must be construed as a whole. Every part of the statute must be interpreted with reference to the context. (Aquino vs. Quezon City, G.R. No. 137534, 03 August 2006).

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