Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

09 September 2019

SEC-OGC Opinion No. 19-34
Re: Rights of a corporation under liquidation

FIRST PROVINCIAL FINANCE CORPORATION
First Provincial House 1
Gatuslao corner Nueva Streets
Bacolod City 1600

Attention: Mr. Conrado P. Lo, Jr., CPA, MBE, Ph.D.
Executive Vice-President

Dear Mr. Lo:

This refers to your letter dated 14 September 2018, requesting for our opinion on whether or not your client, Arca & Company, Inc. (ARCA), whose corporate term has expired, is allowed to continue selling and transferring the ownership of its remaining assets.

In your letter, you stated that you have previously requested the Commission's opinion on whether or not ARCA could still demand payment from the Land Bank of the Philippines (LBP) for land acquired by the Department of Agrarian Reform (DAR) in 1988 under the Comprehensive Agrarian Reform Program, considering that the corporation's corporate term had long expired, to which the Commission opined affirmatively through SEC-OGC Opinion 09-19 (the "Opinion") dated 28 July 2009.

You further stated that to complete ARCA's liquidation, it is now in the process of titling and selling portions of the land rejected by the DAR which were returned to it only in 2014. However, the Bureau of Internal Revenue requests for a similar opinion allowing ARCA to continue selling and transferring its remaining assets. Hence, your query.

The Commission answers your query in the affirmative.

As previously discussed in the Opinion, to which your current query is related, a corporation whose corporate existence is terminated, shall continue as a body corporate for three (3) years for the purpose of liquidation. The corporation's dissolution or expiration of the three-year liquidation period is not a bar to the enforcement of its right as a corporation. Thus, in said Opinion, the Commission ruled that the corporation may still demand payments from the LBP despite its dissolution.

The same holds true under the present circumstances. Under Section 139[1] of the Revised Corporation Code (RCC), a corporation whose

[1] Essentially the same with Section 122 of the Old Corporation Code.

corporate existence is terminated, shall continue as body corporate for three (3) years for the **purpose of liquidation to enable it to settle and close its affairs, dispose of and convey its property, and distribute its assets.**

To reiterate, in the case of Sumera v. Valencia[2], the Supreme Court held:

> "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 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. 139]) 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 (7 R.C.L., Corps., par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 (Old Corp. Code, Sec. 122 [now Sec. 139]) may sue and be sued as such in all matters connected with the liquidation ...."

Relatedly, Section 184[3] of the RCC provides that *"no right or remedy in favor of or against any corporation, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof."*

Applying the foregoing to your query, the sale and transfer of the remaining assets of ARCA are acts in line with the purpose of its liquidation. Thus, ARCA, as a corporate entity, may validly do so within 3 years after the expiration of its corporate term. Within such period, ARCA may convey all of its property to trustees for the purpose of completing the liquidation. There is no time limit within which the trustees must complete the liquidation.

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

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[2] 67 Phil 721. 726 (1939).
[3] Formerly Section 145 of the Old Corporation Code.
[4] SEC Memorandum Circular 2003-15, No. 7.