Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 23-04
Re: Remedies for lost stock and transfer book

14 March 2023

SALUDO TALEON AND ASSOCIATES LAW OFFICES
SAFA Bldg., 5858 Alfonso cor. Fermina Sts.
Brgy. Poblacion, Makati City

Attention: ATTY. DONNA M. MANSILUNGAN

Dear Atty. Mansilungan:

This refers to your letter dated 08 June 2020 on behalf of your client, Lissman Corporation (Lissman), regarding the recording of transfer of shares in the Stock and Transfer Book (STB).

In your letter, you disclosed the following:

a) Lissman is a family corporation which has a total of fifty thousand (50,000) shares valued at ten pesos (Php10.00) per share;
b) The shares of then stockholders Ms. Hilaria De Castro and the shares of Ms. Joanna Jacqueline Cuenca were purchased by Ms. Grace Morales (Ms. Morales);
c) The then corporate secretary, Ms. Jacqueline Morales-Geiger (Ms. Morales-Geiger) allegedly refused to record such transfers due to the loss of the STB;
d) Ms. Morales subsequently transferred some of her shares but were likewise not recorded in the STB;
e) Ms. Morales-Geiger likewise alleged that the certificates of stocks were lost and could not be transferred;
f) The lost certificates of stock were recovered but Ms. Morales-Geiger resigned without recording the transfer.;
g) Lissman's Articles of Incorporation (AOI) provides that it shall be managed by a Board of seven (7) Directors. Its AOI defines **quorum** as a majority of the entire membership of the Board, i.e. minimum of four (4) directors must be present;
h) There are three (3) directors:
    1. Manolita Morales;
    2. Regina Dela Peña[1]; and
    3. Grace Morales;
i) Regina Dela Peña ceased to be a stockholder; and
j) Without a quorum, a new corporate secretary cannot be elected to record the new transfer of shares.

You are asking for the Commission's opinion on the possible "legal remedies that the corporation may take to solve its current predicament."

At the outset, we note that the crux of the concerns revolves around the non-recording of the transfer of shares in Lissman's STB. Thus, we impart the following:

[1] In your letter, you stated that there are three (3) directors, one (1) of which ceased to become a stockholder. Please be guided that a director who ceases to own at least one (1) share of stock shall cease to be such. This is based on Section 22 of the Revised Corporation Code of the Philippines (RCCP). Hence, your corporation only has two (2) directors based on your disclosure.

Duty to keep a STB

Section 73 of the Revised Corporation Code of the Philippines (RCCP)[2] provides that stock corporations must keep a STB.[3] As a general rule, a transfer of shares of stock not recorded in the STB is non-existent as far as the corporation is concerned. It is only when the transfer has been recorded in the STB that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights, as it is mandated by law to recognize, arises.[4] ***SEC-OGC Opinion No. 16-11*** provides the following discussion:

> Where the statutes require or regulate the keeping of corporate books and record, a corporation is duty bound to comply with them. The object of such statutes is to protect the right of the stockholders so that the books may be open to examination to aid in exercising its visitorial power over the corporation, and perhaps to enable the creditors to examine the books also. Thus, your corporations' stock and transfer book should be accurate in all its entries, reflecting all necessary payments, alienations, sales, or transfers of stock. [5]

Remedy if the STB is lost

The disclosure of the status of the STB is important because there are different remedies depending on whether the STB is inaccessible, lost, or destroyed. In your letter, there was an allegation that the STB is lost. In ***SEC-OGC Opinion No. 15-03***, the Commission opined that in case the STB is *lost or destroyed*, an action for reconstitution of the STB shall be filed so that proper entries therein can be made. [6]

In ***Yujuico and Sumbilla v. Umali-Paco and Quiambao***, the Commission ruled:

> When the original STB is lost or destroyed, the STB may be reconstituted and the reconstituted STB must be registered with the Commission, accompanied by a sworn statement executed by any responsible corporate officer setting forth the circumstances attending the loss. In other words, ***reconstitution as a remedy is available only when the STB is lost or destroyed.*** [7] (Emphasis supplied)

Section 3(a), Rule 130 of the Revised Rules on Evidence provides when the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except when the original is ***lost or destroyed***, or ***cannot be produced in court,*** without bad faith on the part of the offeror. The offeror must introduce proof of its execution or existence and state the cause of its unavailability without bad faith on his or her part. [8]

Other remedies when a corporation wrongfully refuses to issue a certificate of stock

In ***SEC-OGC Opinion No. 06-21***, the Commission enumerated other remedies available to an assignee or a transferee of shares of stock, to wit:

> In sum, if the corporation wrongfully refuses to issue a certificate of stock, the following are the remedies available to an assignee or transferee of shares of stock:
>
> 1. file a suit for specific performance of an express or implied contract;
> 2. file for an alternative relief by way of damages where specific performance cannot be granted; and
> 3. file a petition for mandamus to compel issuance of a certificate.[9]

The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by ***mandamus***.[10] The remedy of mandamus is provided under Rule 65, Section 3 of the Rules of Court, to wit:

> When any tribunal, ***corporation***, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act

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[2] Republic Act (R.A.) No. 11232, Revised Corporation Code of the Philippines (RCCP), 23 February 2019.

[3] Section 73, RCCP: "xxx No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates, and the number of shares transferred. The Commission may require corporations whose securities are traded in trading markets and which can reasonably demonstrate their capability to do so to issue their securities or shares of stocks in uncertificated or scripless form in accordance with the rules of the Commission. xxx"

[4] *Ponce vs. Alsons Cement Corporation and Giron*, G.R. No. 139802, 10 December 2002.

[5] SEC-OGC Opinion No. 16-11 addressed to Ms. Luz Garcia dated 14 March 2011.

[6] SEC-OGC Opinion No. 15-03 addressed to Mr. Zando O. Barbol dated 03 July 2015.

[7] *SEC En Banc Case No. 01-11-225*, 06 December 2016.

[8] Section 3(a), Rule 130, Revised Rules on Evidence, A.M. No. 19-08-15-SC, 08 October 2019.

[9] SEC Opinion No. 06-21 addressed to Atty. James Dennis G. Gumpal dated 23 March 2006.

[10] *Rural Bank of Salinas, Inc. vs. Court of Appeals*, G.R. No. 96674, 26 June 1992.

> required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.[11]

In ***Andaya vs. Rural Bank of Cabadbaran***, the Court discussed the remedies available to the transferee, one of which is mandamus, to wit:

> It is already settled jurisprudence that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of ***mandamus*** to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. This remedy is available even upon the instance of a bona fide transferee who is able to establish a clear legal right to the registration of the transfer. This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin*:
>
> > A person who has purchased stock, and who desires to be recognized as a stockholder, for the purpose of voting, must secure a standing by having the transfer recorded upon the books. If the transfer is not duly made upon request, he has, as his remedy, to compel it to be made.
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> Thus, in *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*, this Court stressed that the registration of a transfer of shares is ministerial on the part of the corporation:
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> > Clearly, the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. The Court had ruled in *Rural Bank of Salinas, Inc. v. Court of Appeals* that the corporation's obligation to register is ministerial, citing Fletcher, to wit:
> >
> > In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.
> >
> > The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by mandamus.
>
> The Court further held in *Rural Bank of Salina*s that the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred.
>
> Consequently, ***transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates.***[12] (Citations omitted, emphasis supplied)

The writ will only be granted if it is shown that the transferee has no other plain, speedy and adequate remedy and that there are no unpaid claims against the stocks whose transfer is sought to be recorded. In ***Rivera vs. Florendo***, the Court stated that there should be compliance with the mode of transfer prescribed by law and as such, Mandamus will not lie against the corporation where the shares of stock in question are not indorsed by the registered owner who refused registration thereof in the STB, to wit:

> It is evident that mandamus will not lie in the instant case where the shares of stock in question are ***not even indorsed by the registered owner*** Rivera who is specifically resisting the registration thereof in the books of the corporation. Under the above ruling, ***even the shares of stock which were purchased by private respondents from the other incorporators cannot also be the subject of mandamus on the strength of mere indorsement of the supposed owners of said shares in the absence of express instructions from them. The rights of the parties will have to be threshed out in an ordinary action***.[13] (Emphasis and underscoring supplied)

Another remedy is specific performance. An ***action for specific performance*** is a remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. The actual accomplishment of a contract by a party bound to fulfill it. Evidently, before the remedy of specific performance may be availed of, there must be a breach of the contract.[14] The transferee may opt to avail of an action of specific performance against the transferor who **refuses or neglects to endorse the certificates of stock** and to **provide for an instruction to transfer** the same in the name of the transferee

Alternatively, an aggrieved party may ask for ***damages*** in conjunction with the action for specific performance or damages may be awarded by the Court when specific performance is not available. This stems from the fact that a corporation has a ministerial duty to issue a certificate of stock to a stockholder who has fully paid for his subscription. Should the corporation refuse upon demand to issue a stock certificate to the person entitled thereto, the latter may sue the corporation for damages.[15]

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[11] Section 3, Rule 65, Rules of Court.
[12] *Andaya vs. Rural Bank of Cabadbaran, Inc.*, G.R. No. 188769 (Resolution), 03 August 2016.
[13] *Rivera vs. Florendo*, G.R. No. L-57586, 08 October 1986; see also *Ponce vs. Alsons, supra.*
[14] *Ayala Life Assurance, Inc. vs. Ray Burton Development Corp.*, G.R. No. 163075, 23 January 2006.
[15] SEC-OGC Opinion No. 06-21 addressed to Atty. James Dennies C. Gumpal dated 23 March 2006.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[16] 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.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[16] Section 7, SEC Memorandum Circular No. 15-03, 16 December 2003.