



Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

01 July 2009

PUNONGBAYAN & ARAULLO
20th Floor, Tower 1
The Enterprise Center 6766
Ayala Avenue, Makati City

SEC Opinion No. 09-13
Effective Date of Merger

Attention: **MR. RAYMUND S. GALLARDO**
Partner, Tax Advisory & Compliance

Gentlemen:

This refers to your letter dated 26 January 2009 requesting confirmation on the issue of whether your clients, DELFINGEN PH-FILIPINAS, INC. (Delfingen PH) and DELFINGEN WEST, INC. (Delfingen West) can include the following stipulation in their plan of merger:

"Effective Date of Merger. Upon approval of this Plan of Merger by the stockholders of Delfingen PH and Delfingen West, the Articles of Merger shall be filed by Delfingen PH and Delfingen West with the Securities and Exchange Commission ("SEC"). The Merger shall be effective on January 1, 2009 (hereinafter referred to as "Effective Date of Merger"), on the condition that this Effective Date of Merger is approved by the SEC. Accordingly, this Plan of Merger, as well as the Articles of Merger, will have no legal effect and will not be legally binding as between Delfingen PH and Delfingen West, nor will the rights and obligations of third parties as regards Delfingen PH and Delfingen West be affected, without the issuance by the SEC of the Certificate of Merger. Upon the issuance of the Certificate of Merger by the SEC, the Effective Date of Merger shall become operative and binding between Delfingen PH and Delfingen West."

The Commission, in a previous opinion¹, has allowed an identical provision to form part of the Articles of Merger of two corporations. It was provided that notwithstanding the provisions of Section 79² of the Corporation Code, wherein it was stated that the merger shall be effective upon the issuance by the Commission of the certificate of merger, the stipulation may be allowed in view of the following:

- 1 SEC Opinion No. 06-04 Re: Effective Date of Merger dated 17 January 2006
- 2 Sec. 79. **Securities and Exchange Commission's approval and effectivity of merger or consolidation.** - xxx Where the Commission is satisfied that the merger or consolidation of the corporation concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, as the case may be, at which time the merger or consolidation shall be effective.

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1) *Public policy considerations.* "Jurisprudence dictates however that, in the exercise of supervisory and regulatory functions over corporations and partnerships registered with the Commission, the Corporation Code should be given a reasonable or liberal construction which will best execute its purpose, even though such construction is not within its strict literal interpretation. A strict construction should not be permitted to defeat the policy and purpose of the Code. Therefore, 'a literal interpretation is to be rejected if it would be unjust or lead to absurd results' (Soriano v. Offshore Shipping and Manning Corp. 177 SCRA 513,519 [1989])"³

The Supreme Court has ruled that "(t)he spirit, rather than the letter of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent."⁴ In this instance, "the Corporation Code should be given a judicious, not stern and discordant interpretation, which will promote and uplift the development of trade relations and which will encourage friendly commercial intercourse among corporations provided that its primordial end (protection of public interests) is served."⁵


2) *No party will be prejudiced thereby.* Prior to the approval of the proposed stipulation, a confirmation was made by the applicants that the same would not adversely affect any third party, nor would it cause a decrease in tax dues of the corporations involved.

Based on your letter, the merger would be in the best interests of both Delfingen PH and Delfingen West. Moreover, there was an assurance that "the proposed stipulation of the parties in their Plan of Merger with regard to the effective date of merger would not prejudice the rights of the general public or third parties transacting with either Delfingen PH and Delfingen West nor would it result to any decrease in the payment of tax of either of the parties."⁶

From the foregoing, it is clear that there can be no objection to the proposed stipulation in your clients' plan of merger, which is legally feasible.

It shall be understood that the opinion rendered is based solely on 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 Commission on other cases whether of similar or dissimilar circumstances.

Very truly yours,



Vernette G. Umali-Paco
General Counsel

3 SEC Opinion No. 06-04 Re: Effective Date of Merger dated 17 January 2006
4 Paras vs. COMELEC G.R. No. 123169 November 4, 1996
5 SEC Opinion No. 04-36 Effectivity of the Merger dated 15 June 2004
6 p. 3 of the Letter Request