



Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

28 July 2009

SEC-OGC Opinion No. 09-24
Mass revocation orders;
Powers of a Revoked Corporation

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ATTENTION: Magilyn T. Loja
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Gentlemen:

This has reference to your letters dated 05 January 2009 and 07 September 2008, respectively requesting confirmation on your statement that the mass revocation orders¹ issued by the Commission are not final and executory. You likewise requested confirmation on your position that covered corporations continue to have corporate powers until finality of the mass revocation orders.²

Specifically, you asked as follows:

- "a. *May a covered corporation continue to operate its business?*
- b. *May a covered corporation issue shares of stock?*

¹ More pertinently SEC Orders dated 22 April 2003, 8 July 2003 and 20 August 2003.

² Letter dated 05 January 2009.

c. *May a covered corporation sell its assets or purchase properties?*

d. *May a covered corporation sue another person or entity for purposes of recovering its property?*

i. *May the board of directors pass a resolution authorizing an officer to sue or initiate a complaint in Philippine courts on behalf of the corporation?*

ii. *May the corporation still allege in the said complaint that it is a corporation duly organized and existing under Philippine laws?"*

We clarify that an order of revocation is immediately effective. Once the revocation order is issued, a subject corporation's existence is terminated at that very instant. SEC Circular No.4, series of 2008 ("Circular no. 4," for brevity) did not suspend the covered revocation orders' immediate effect. It only provides an additional period within which a covered corporation may petition the commission for lifting the revocation order. The phrase "final and executory" contained in this circular³ only means that after the given period, a covered corporation no longer has any further remedy available with the Commission against the respective revocation order. It does not mean that the revocation order is only effective after the lapse of the period for filing the petition to lift. To subscribe to such a view, as you submit, would render the revocation order inutile and defeat its very purpose.

In short, a covered corporation's existence is deemed terminated until the particular revocation order is lifted.

The fact that Circular no. 4 gives a longer period within which to revive their certificate of registration is not inconsistent with Section 122 of the Corporation Code since there are instances when the three-year winding up period allowed for dissolved corporations to liquidate its assets and wind up its affairs can be extended.⁴

³ SEC Circular No.4, series of 2008, provides:

"xxx to file their Petition to Set Aside the Order of Revocation with the Commission, otherwise the Revocation Order shall become final and executory."

⁴ *Rene Knecht and Knecht, Inc. vs. United Cigarette Corp., et. al.*, G.R. No. 139370, July 4, 2002.; *Reburiano vs. Court of Appelas*, 301 SCRA 342; SEC Opinion No. 33-03 dated June 16, 2003 addressed

Once a corporate franchise is revoked, the corporation is dissolved⁵. Dissolution is a condition of law and fact which ends the capacity of the body corporate to act as such, and necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate enterprise."⁶ Since the dissolved corporation ceases to exist, it is without any corporate powers either *de jure* or *de facto*, and has none of the attributes of a legal corporation."⁷

However, Section 122 of the Corporation Code provides:

"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.

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.

Upon the winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located."

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or

to Atty. Teresita A. M. Villaruz; Sec En Banc case, In the Matter of Northern Luzon Transportation, Inc. SEC AC No. 347 October 7, 1991.

⁵ SEC-Opinion No. 01-06 dated January 5, 2006 addressed to Mr. Eliseo A. Fernandez.

⁶ SEC Opinion dated 20 August 2008 addressed to JT Leonardo C. Santos.

⁷ Fletcher Cyclopedia of the Law of Private Corporations, Vol 16A, page 286.

property except upon lawful dissolution and after payment of all its debts and liabilities."

In other words, the Corporation Code provides that a corporation whose corporate franchise has been revoked continues as a body corporate for three (3) years after the issuance of the revocation order but only for purposes of liquidation.

a. May a covered corporation continue to operate its business?

No, a covered corporation may not continue to operate its business. Section 122 of the Corporation Code expressly provides that a corporation, whose corporate franchise was revoked, may continue as a body corporate for liquidation purposes only and not for the purpose of continuing the business for which it was established.

However, while the dissolved entity is prohibited from continuing its operation as a "corporation," it may operate to continue to undertake the purposes for which it was organized but its status is only that of an ordinary "association" which has no juridical personality.⁸

b. May a covered corporation issue shares of stock?

No, a covered corporation may not issue shares of stock. Again, Section 122 of the Corporation Code expressly provides that a corporation, whose corporate franchise was revoked, may continue as a body corporate for liquidation purposes. The issuance of shares of stock, which necessarily implies the infusion of further investment or new capital into the corporation, is obviously inconsistent with the liquidation or winding up of the corporate affairs.

c. May a covered corporation sell its assets or purchase properties?

Yes, a covered corporation may sell its assets pursuant to Section 122 of the Corporation Code, which expressly provides that a corporation may dispose of and convey its properties and assets for purposes of liquidation.

On the other hand, a covered corporation may only purchase properties if such a purchase would be consistent with the purpose of

⁸ (a) De Leon, *The Corporation Code of the Philippines annotated*, 2002 Edition, p.751, citing SEC Opinion dated Sept. 25, 1995; (b) 6 *American Jurisprudence 2d*, p. 431. "In strict legal theory, however, a corporate body is entirely different from an unincorporated association, and the rules of the law concerning the one may not necessarily apply to the other xxx"

liquidation. However, for obvious reasons, it is rare for a liquidating entity to further acquire more non-liquid assets.

d. May a covered corporation sue another person or entity for purposes of recovering its property?

Yes a covered corporation may sue for purposes of recovering its property. The corporation's dissolution, or even the expiration of its three-year liquidation period, is not a bar to the enforcement of its rights as a corporation.⁹

In the case of *Sumera v. Valencia*,¹⁰ 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. 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 (7 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. . . .**" (Emphasis added.)

Further, in the case of *Gelano vs. Court of Appeals*,¹¹ the Supreme Court ruled:

However, a corporation that has a pending action and which cannot be terminated within the three-year period after its dissolution is authorized under Sec. 78 [now §122] of the Corporation Law to convey all its property to trustees to enable it to prosecute and defend suits by or against the corporation beyond the three-year period. Although private respondent did not appoint any

⁹ *Rene Knecht and Knecht, Inc. vs. United Cigarette Corp., et. al.*, G.R. No. 139370, July 4, 2002.

¹⁰ 67 Phil. 721, 726 (1939).

¹¹ 103 SCRA 90 (1981).

trustee, yet the counsel who prosecuted and defended the interest of the corporation in the instant case and who in fact appeared in behalf of the corporation may be considered a trustee of the corporation at least with respect to the matter in litigation only. Said counsel had been handling the case when the same was pending before the trial court until it was appealed before the Court of Appeals and finally to this Court. We therefore hold that there was substantial compliance with Sec. 78 [now §122] of the Corporation Law and such private respondent Insular Sawmill, Inc. could still continue prosecuting the present case even beyond the period of three (3) years from the time of dissolution.

...[T]he trustee may commence a suit which can proceed to final judgment even beyond the three-year period. No reason can be conceived why a suit already commenced by the corporation itself during its existence, not by a mere trustee who, by fiction, merely continues the legal personality of the dissolved corporation should not be accorded similar treatment allowed ³/₄ to proceed to final judgment and execution thereof." (Emphasis added.)

Indeed, the rights of a dissolved corporation are accorded protection by law under Section 145 of the Corporation Code, which provides:

"Section 145. Amendment or repeal. 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."

d.1. May the board of directors pass a resolution authorizing an officer to sue or initiate a complaint in Philippine courts on behalf of the corporation?

In the case of *Clemente v. Court of Appeals*,¹² the Supreme Court held that the board of directors may be permitted to complete the corporate liquidation by continuing as "trustees" by legal implication.¹³ Hence, the board of directors, acting as trustees of the dissolved

¹² 242 SCRA 717 (1995).

¹³ Cited in *Reburiano vs. Court of Appeals*, 301 SCRA 342 (1999).

corporation, may authorize an officer to sue or initiate a complaint in Philippine courts.

d.2. May the corporation still allege in the said complaint that it is a corporation duly organized and existing under Philippine laws?"

No, the covered corporation may not allege in the said complaint that it is a corporation duly organized and existing under Philippine laws since, as discussed earlier, a covered corporation's existence is deemed terminated until the particular revocation order is lifted.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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 in other cases whether of similar or dissimilar circumstances. 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.



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