BDB Law wts
DU-BALADAD AND ASSOCIATES

BDB Law's "Tax Law for Business" *appears in the opinion section of* ***Business Mirror*** *every Thursday*.

Reckoning of a corporate term

A few years back, we wrote an article in this column about the necessity of keeping an eye on the life of a corporation. Included in that article is the reminder regarding the need to extend a corporation's life which is about to expire and the requirements for undertaking such extension. A recently issued opinion by the Securities and Exchange Commission (SEC) prompted us to again remind concerned parties that there is such an end to a corporate term, and there is a need to renew such term if the corporation intends to continue doing business under the same juridical entity.

The existing Corporation Code, which took effect on May 1, 1980, provides that a corporation shall exist for a period not exceeding 50 years from the date of incorporation, unless sooner dissolved or unless said period is extended. This means that the number of years that a corporation may exist is limited to 50 years. However, this corporate life may be extended for a period not exceeding 50 years in any single instance by an amendment of the articles of incorporation. But no extension can be made earlier than five years prior to the original or subsequent expiry date(s).

There is, therefore, proper timing for the renewal of corporate life. One cannot do it too early, neither can it be done after the life has already expired. There were, in fact, a number of instances where the SEC denied the amendment of articles of incorporation extending the corporate life, simply because the original corporate life had already expired. A life that has already expired cannot be extended.

But one cannot properly determine the end of the corporate life if he does not know the reckoning or the start of the corporate life. Thus, in order for the end of the corporate term to be determined, it is equally necessary to determine when the said term is to be reckoned. While there are SEC issuances in this matter, for some, this is not so clear especially for stock corporations incorporated prior to the effectivity of the present Corporation Code.

There were earlier opinions issued by the SEC holding that the 50-year period should not be counted from the date of registration. Instead, it would be appropriate to reckon the 50-year period from the date of the effectivity of the Corporation Code, which is May 1, 1980. For instance, in the case of an educational institution that was originally registered with the SEC in 1911 with a perpetual corporate term, it was deemed to exist only for a period of 50 years reckoned from May 1, 1980, the date of the effectivity of the Corporation Code. Thus, its corporate existence will expire only on May 1, 2030, unless sooner dissolved or extended within the allowed period.

In a recent SEC opinion *(SEC-OGC Opinion 16-27, dated November 23, 2016),* a corporation that was originally incorporated in 1962 and with a corporate term of 50 years specifically requested the SEC to provide an opinion as to whether its corporate term should be counted from May 1, 1980, the date of the effectivity of the Corporation Code. In response, the SEC noted that its previous opinions, with respect to the counting of the term of corporations registered under the corporation law, the law prior to the Corporation Code, finds no application to stock corporations. The SEC clarified that its previous opinions refer to educational institutions with perpetual term. In short, the 50-year term is not a new requirement for stock corporations that are not educational corporations. Thus, the original 50-year corporate term must be retained and must be counted from the date of its registration, not from May 1, 1980.

It is clear, therefore, that for corporations registered prior to May 1, 1980, the reckoning of the 50-year corporate life from May 1, 1980, applies only to educational corporations. For stock corporations, which are not educational institutions, the 50-year life should be counted from the actual date of registration with the SEC, whether the registration was made prior or subsequent to May 1, 1980.

This period is so significant because the nonrenewal within the allowed five-year period prior to the end of corporate life will result in the denial of the amendment extending the corporate term. This results in the automatic death of the corporate term. It is, thus, appropriate for the corporations registered in 1967 to 1971 to already start the amendment process amending the corporate term and file the same with the SEC.

****

The author is a senior partner of Du-Baladad and Associates Law Offices (BDB Law), a member- firm of World Tax Services (WTS) Global.

 If you have any comments or questions concerning the article, you may e-mail the author at fulvio.dawilan@bdblaw.com.ph or call 403-2001 local 310.