



TAX LAW FOR BUSINESS
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Extending one's corporate term

IN some countries, a company can exist for as long as it can engage in business. But here in the Philippines, the original term allowed in the articles of incorporation should not exceed 50 years from the date of the company's registration or incorporation. Such corporate term may be extended for an unlimited number of times by filing an amendment to the company's articles of incorporation with the Securities and Exchange Commission (SEC). But each and every extension should not go beyond 50 years.

In filing an extension for corporate term, there are certain rules and requirements that must be followed, one of which is that the extension cannot be filed earlier than five years before the expiration of the company's life. Another regulation that is strictly implemented by the SEC says that a corporation whose corporate term has expired should not be allowed to amend its articles of incorporation extending its corporate life.

Such was the case of one corporation which filed an application to amend its articles of incorporation extending its term for another 50 years on December 22, 2010, one day before the actual expiration of its corporate life on December 23, 2010. The SEC did not accept the application for processing since the accompanying director's certificate did not certify that the stockholders, owning and representing at least two-thirds of the company's outstanding capital stock, voted and approved the amendment.

On December 23 the corporation filed a letter with the SEC seeking an extension of time to file an amended article of incorporation. Such request was denied by virtue of Resolution 394 wherein the commission en banc—or with all the commissioners in attendance—resolved to "adopt the policy that corporations with expired terms of existence be not allowed to file any amended articles of incorporation extending their corporate life." In view of such denial, the company filed an appeal with the commission en banc.

The commission, in resolving the issue, ruled that in accordance with Sections 16 and 37 of the Corporation Code of the Philippines, it is clear that in order for a stock corporation's amendment for extension of its corporate term to become effective, the following steps are necessary: (1) a majority of the board of directors vote to adopt the amendment; (2) the adoption of the amendment is ratified by the stockholders representing at least two-thirds of the outstanding capital stock in a meeting specifically called for that purpose; (3) the corporation prepares a copy of the articles of incorporation, as amended, underscoring the changes made; (4) the corporate secretary and majority of the directors certify under oath that the amendments have been duly approved by the required vote of the stockholders; (5) the corporation submits the amended articles together with the secretary/directors' certificate to the SEC for approval.

The company, in its appeal, raised the defense that its failure to state in the director's certificate that the amendment was approved by the stockholders representing at least two-thirds of the outstanding capital stock was an inadvertent mistake and it alleged that during the special meeting on December 13, 2010, all of its directors, together with the stockholders representing at least two-thirds of the outstanding capital stock, approved the subject amendment, thus, the same constitutes substantial compliance with Section 16 of the code, and the failure to attest to such fact in the director's certificate is not crucial to the amendment becoming effective.

The commission en banc, in its decision, stated that such argument is contrary to the plain meaning of the law and should not be sustained, citing an SEC decision that "it is entrenched in our jurisdiction that where a statutory requirement is made in explicit and unambiguous terms, no discretion is left to the judiciary or administrative agency concerned—they must see to it that the statutory mandate is obeyed."

Further, the commission en banc, in denying the company's appeal ruled that, "in our jurisdiction, it is settled that when the corporate term expires, the corporation is ipso facto dissolved, and cannot thereafter exercise any power, except such as the law confers in order to enable it to wind up its affairs in accordance with Section 122 of the Code." (Benguet Consolidates Mining Co. v. Pineda, GR L-7231, March 28, 1956)

This should be a lesson to all corporations whose term of existence is about to expire. It should be noted that no extension can be filed after the expiration of the corporate term since there is no more life to extend.

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