Securities and Exchange Commission
PHILIPPINES

SEC Memorandum Circular No. 23
Series of 2019

TO : **ALL CONCERNED**

SUBJECT : **Guidelines on the Revival of Expired Corporations**
(Pursuant to Section 11 of the Revised Corporation Code of the Philippines)

WHEREAS, Republic Act No. 11232, or the Revised Corporation Code of the Philippines ("RCC"), was approved on February 20, 2019 and took effect on February 23, 2019;

WHEREAS, under Section 11 of the RCC, the term of existence of a corporation shall be perpetual unless its articles of incorporation provides otherwise;

WHEREAS, under the same Section of the RCC, a corporation whose term has expired ("Expired Corporation") may apply for a revival of its corporate existence, together with all the rights and privileges under its certificate of incorporation and subject to all its duties, debts and liabilities existing prior to its revival;

WHEREAS, under the same Section of the RCC, no application for revival of certificate of incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, non-stock savings and loan associations (NSSLAs), pawnshops, corporations engaged in money service business, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency;

NOW THEREFORE, the Commission hereby promulgates the following guidelines on the revival of an Expired Corporation:

Section 1. Applicability

The following corporations may file a Petition for Revival of Corporate Existence:

a. Generally, a corporation whose term has expired;

b. An Expired Corporation whose Certificate of Registration has been revoked for non-filing of reports (e.g. General Information Sheet, and

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Audited Financial Statements), provided that it shall file the proper Petition to Lift its Revoked Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof;

c. An Expired Corporation whose Certificate of Registration has been suspended, provided that it shall file the proper Petition to Lift its Suspended Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof; or

d. An Expired Corporation whose corporate name has already been validly re-used, and is currently being used, by another existing corporation duly registered with the Commission, provided that the former shall change its corporate name within thirty (30) days from the issuance of its Certificate of Revival of Corporate Existence.

Section 2. Who May Not Apply for Revival

The following are not allowed to file a Petition for Revival of Corporate Existence:

a. An Expired Corporation which has completed the liquidation of its assets;

b. A corporation whose Certificate of Registration has been revoked for reasons other than non-filing of reports (e.g. General Information Sheet, and Audited Financial Statements);

c. A corporation dissolved by virtue of Sections 6(c) and 6(d) of Presidential Decree No. 902-A, as amended by Presidential Decree No. 1799; or

d. An Expired Corporation which already availed of re-registration, in accordance with Memorandum Circular No. 13, series of 2019 (Amended Guidelines and Procedures on the Use of Corporate and Partnership Names), or other memorandum circulars issued by the Commission pertaining to re-registration, except when:

   i. The re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to undergo voluntary dissolution immediately after the issuance of the Petitioner's Certificate of Revival; or

   ii. The re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to change its

corporate name immediately after the issuance of the Petitioner's Certificate of Revival.

Section 3. Required Vote to Initiate Revival

The required number of votes for the Revival of an Expired Stock Corporation is at least a majority vote of the board of directors, and the vote of at least majority of the outstanding capital stock. For nonstock corporations, at least a majority vote of the board of trustees, and the vote of at least majority of the members.

Section 4. Where to File the Petition for Revival of Corporate Existence

The Petition for Revival of Corporate Existence may be filed with the Commission's Company Registration and Monitoring Department ("CRMD"), any SEC Satellite Office, or any SEC Extension Office.

Section 5. Payment of Fees

The following fees must be paid for the Revival of Corporate Existence:

a. Petition Fee in the amount of Three thousand and sixty pesos (P3,060.00), inclusive of Legal Research Fee and Documentary Stamp Tax; and

b. Filing Fee for the extension of term of existence, based on the present authorized capital stock of the company (for stock corporations), pursuant to SEC Memorandum Circular No. 3, Series of 2017 (Consolidated Schedule of Fees and Charges), or other amendments thereto.

Section 6. Procedure of Revival

a. Petitioner, or its duly authorized representative, shall file a verified Petition for the Revival of Corporate Existence, in accordance with the SEC Rules of Procedure, and must contain the following statements:

   i. That the revival of Petitioner's corporate term was approved by a vote of at least majority of the outstanding capital stock, or by at least majority of the members in the case of a nonstock corporation;

   ii. If there has been a change in the composition of the stockholders or members since the expiration of Petitioner's corporate term, a

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Reconciliation of the changes in the composition of the stockholders or members from the date of expiration of its corporate term up to the date of stockholders' or members' approval of the resolution to file the Petition for Revival of Corporate Existence, or the date of approval by the board of directors, or trustees in the case of a nonstock corporation, of the filing of said Petition, whichever is later, which shall provide for, and refer to, the supporting evidence (e.g. Deed of Sale, Deed of Assignment, Death Certificate of a stockholder/member, and Extrajudicial Settlement of the Estate of a stockholder/member) of the changes in the composition of the stockholders or members;

iii. That the undersigned are the duly elected directors or trustees, and officers of Petitioner;

iv. That, as of the date of filing of the Petition for Revival, no action or proceeding has been filed or is pending before any court or tribunal involving an intra-corporate dispute or claim by any person or group against the directors, officers, or stockholders of the Corporation;

v. That the revival of Petitioner's corporate term shall not cause damage, loss, or injury to any third person or any government agency;

vi. If Petitioner's corporate name has already been validly reused, and is currently being used, by another existing corporation duly registered with the Commission, that Petitioner shall change its corporate name within thirty (30) days from the issuance of its Certificate of Revival of Corporate Existence (Petitioner must also state in its Petition its proposed new corporate name, which must be duly reserved with the Commission); and

vii. If Petitioner is an expired corporation which already availed of re-registration, in accordance with Memorandum Circular No. 13, Series of 2019 (Amended Guidelines and Procedures on the Use of Corporate and Partnership Names), or other memorandum circulars issued by the Commission pertaining to re-registration, that:

1) The re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to undergo voluntary dissolution immediately after the issuance of the Petitioner's Certificate of Revival; or

2) The re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to change its corporate name immediately after the issuance of the Petitioner's Certificate of Revival.

b. Within fifteen (15) days from filing, Petitioner, or its duly authorized representative, shall publish in a newspaper of general circulation its Petition for Revival, stamped "Received" by the Commission, with the corresponding docket number.

c. Within fifteen (15) days from publication, Petitioner, or its duly authorized representative, shall file with the Commission the following pieces of evidence of the publication of the Verified Petition for Revival in a newspaper of general circulation:

   i. Affidavit of the Newspaper's Editor-in-Chief/Managing Editor/Content Editor attesting to the fact of publication of the Petition for Revival; and

   ii. Actual newspaper cutout of the publication showing the date and name of the newspaper, and all the pages of the Petition with its attachments.

d. Parties in interest may file a Verified Opposition to the Petition for Revival, with a clear statement of the grounds relied upon, within fifteen (15) days from the date of publication of the Verified Petition for Revival. The party opposing the Petition for Revival shall serve to the Petitioner a copy of the Verified Opposition with its attachments, and shall attach proof of such service in the Verified Opposition to be filed with the Commission.

e. The Petition for Revival, and any Opposition thereto, shall be verified in the same manner as the Verified Answer under Section 3-3, Rule III of Part II of the 2016 Rules of Procedure of the Securities and Exchange Commission.

f. A party in interest shall file with the Commission the original documents along with three (3) copies thereof, which shall be properly marked.

g. Upon filing of the Petition for Revival or during a scheduled conference, Petitioner, or its duly authorized representative, shall pre-mark all evidence to be introduced, and shall present the original documents for

comparison with the photocopies of the supporting documents attached with the Petition for Revival. A party opposing the Petition for Revival, or his/her/its duly authorized representative, upon filing of the Opposition or during a scheduled conference, shall pre-mark all evidence to be introduced. The parties shall make accessible to the adverse party the original of the evidence presented, in order to verify and compare in case of doubt on its authenticity. In lieu of a scheduled conference, the Petitioner or a party opposing the Petition for Revival may stipulate in their respective Petition or Opposition that each of the documents submitted is an authentic copy of the original, complete, and all statements and information provided therein are true and correct.

h. The Commission may call the parties for a Clarificatory Conference to clarify factual and legal issues.

i. If the Commission finds that the Petition is meritorious, it shall grant the Petition and issue a Certificate of Revival of Corporate Existence, which shall be evidence of Petitioner's revival, together with all the rights and privileges under its Certificate of Incorporation and subject to all its duties, debts and liabilities existing prior to the revival of its corporate term.

j. The Certificate of Revival shall provide for a perpetual term of existence unless a specific corporate term is stated by the applicant corporation in the verified Petition for Revival.

Section 7. Documentary Requirements

Petitioner shall file with, and refer to in, its Petition for Revival the following documents:

a. Photocopy of Petitioner's Certificate of Incorporation and Articles of Incorporation;

b. Photocopy of Petitioner's Certificate(s) of Filing of Amended Articles of Incorporation, with the respective Amended Articles of Incorporation, if Petitioner's Articles of Incorporation were amended;

c. Revived Articles of Incorporation, consisting of Petitioner's latest Amended Articles of Incorporation and the proposed changes in the corporate term to be effected by the revival, which shall be underlined;

d. Petitioner's duly accomplished General Information Sheet ("GIS") as of the date of expiration of its corporate term, or an equivalent document, such as, but not limited to, the Secretary's Certificate indicating the list of stockholders and officers with the corresponding stockholdings;

e. Notarized list of stockholders or members as of the date of approval of the revival, stating their names, their nationalities, and number of shares subscribed, amount subscribed and paid, or the respective members' contributions for nonstock corporations, certified by the Corporate Secretary;

f. If there has been a change in the composition of the stockholders or members since the expiration of Petitioner's corporate term, the GIS of the Petitioner as of the date of stockholders' or members' approval of the resolution to file the Petition for Revival of its corporate existence, or the date of the board of directors' or trustees' approval of the filing of the said Petition, whichever is later;

g. Photocopy of the supporting evidence (e.g. Deed of Sale with the Certificate Authorizing Registration, Deed of Assignment, Death Certificate of a stockholder/member, and Extrajudicial Settlement of the Estate of a stockholder/member) referred to in the Reconciliation of the changes in the composition of the stockholders or members;

h. Photocopy of Petitioner's Audited Financial Statements as of the date of expiration of its corporate term, , and for the year immediately preceding, as audited by an independent Certified Public Accountant;

i. Photocopy of Petitioner's Audited Financial Statements as of a date not exceeding one hundred twenty (120) days prior to the date of filing of the Petition for Revival, and for the year immediately preceding, as audited by an independent Certified Public Accountant;

j. Photocopy of the Official Receipt(s) for the payment of the Petition fee and Filing fee;

k. A favorable recommendation of the appropriate government agency in the case of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAs, pawnshops, corporations engaged in money service business, and other financial intermediaries;

l. If Petitioner's corporate name has already been validly reused, and is currently being used, by another existing corporation duly registered

with the Commission, Proof of Reservation of Petitioner's Proposed New Corporate Name; and

m. If Petitioner is an expired corporation which already availed of re-registration, in accordance with Memorandum Circular No. 13, series of 2019 (Amended Guidelines and Procedures on the Use of Corporate and Partnership Names), or other memorandum circulars issued by the Commission pertaining to re-registration, Certification, under oath, issued by the Corporate Secretary of the re-registered corporation stating that:

   i. the re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to undergo voluntary dissolution immediately after the issuance of the Petitioner's Certificate of Revival; or

   ii. the re-registered corporation has given its consent to the Petitioner to use its corporate name, and has undertaken to change its corporate name immediately after the issuance of the Petitioner's Certificate of Revival.

Section 8. Additional Requirement for Certain Corporations

No application for revival of certificate of incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAs, pawnshops, corporations engaged in money service business, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

Section 9. Applicability of the Revised Corporation Code

To extend to the revived corporations a benefit similar to that provided in Section 185 of the RCC, a revived corporation shall be given a period of two (2) years from the issuance of its Certificate of Revival to comply with the provisions of the Revised Corporation Code, unless otherwise provided in these guidelines.

Section 10. Appraisal Right

The revival of the corporate existence is without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of the Revised Corporation Code.

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Section 11. When Exemption May Be Given

In the broader interest of justice and in order to best serve public interest, the Commission may, in particular matter, exempt an Expired Corporation from these Guidelines in exceptional cases and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.

Section 12. Applicability of Other Rules

The pertinent provisions of the Rules of Procedure of the Commission and the Rules of Court of the Philippines may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.

This Memorandum Circular shall take effect immediately upon its publication in a newspaper of general circulation.

21 November 2019, Pasay City.

EMILIO B. AQUINO
Chairperson