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

COMMISSION *EN BANC*

In the Matter of the Extension of Corporate Term of Ching Bee Trading Corporation

CHING BEE TRADING CORPORATION,
Appellant,

-versus-

SEC En Banc Case No. 01-11-228

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.

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DECISION

This refers to CHING BEE TRADING CORPORATION's appeal from the Company Registration and Monitoring Department's ('CRMD') letter dated 06 January 2011.

CHING BEE TRADING CORPORATION ('CBTC') is a stock corporation that was registered with the Commission under SEC Registration No. 18036 on 23 December 1960. Under its existing articles of incorporation, CBTC's term of existence is for fifty (50) years from its incorporation - that is, until on 23 December 2010.[1]

On 22 December 2010, CBTC submitted an amended articles of incorporation, extending its corporate term for another fifty (50) years from 23 December 2010, to the CRMD for approval. However, the CRMD processor did not accept the submission since the accompanying *Director's Certificate* did not certify that stockholders, owning and representing at least two thirds (2/3) of CBTC's outstanding capital stock, voted and approved the amendment.[2]

[1] Article 4 of CBTC's articles of incorporation.
[2] *Petitioner's Memorandum on Appeal* dated 14 February 2011, page 6;

The said *Director's Certificate,*[3] provides:

'WE, the undersigned Members of the Board of Directors of **CHING BEE TRADING CORPORATION**, hereby certify that:

That during the special meeting of the Board of Directors of Ching Bee Trading Corporation held at its principal office at Unit 801, Tiffany Mansion, No. 21 Eisenhower St., Grennhills, San Juan City, National Capital Region on December 13, 2010, the following resolution was unanimously approved, to wit:

RESOLVED, as it is hereby resolved, that the period of existence of CHING BEE TRADING CORPORATION be extended to another Fifty (50) years, hence, Article 4, of the **ARTICLES OF INCORPORATION of CHING BEE TRADING CORPORATION** be amended to read as follows.

"4 – That the term for which said corporation is to exist **is extended to another fifty (50) years from December 23, 2010".** (amended on December 13, 2010).xxx'

It was signed and sworn to on 22 December 2010 by the following persons:

1) Esperanza Sy Lim
2) Mariano McArnold S. Lim
3) Nelson S. Lim
4) Pua Chay (Johnny Lim)
5) Henry T. Lim

Subsequently, on 23 December 2010, CBTC filed a letter requesting the CRMD for an extension time to file an amended articles of incorporation extending the former's term of existence. CBTC alleges that this request was made in accordance with the CRMD processor's advice.[4]

In response, the CRMD, through its letter dated 06 January 2011, advised CBTC that the request cannot be granted in view of SEC Resolution No. 394, series of 2008. In the said resolution, the Commission *En Banc* 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 this appeal, CBTC assails the CRMD's 06 January 2011 letter, and raises the following issues:[5]

[3] Submitted by CBTC as part of Annex D of its Memorandum of Appeal.
[4] Memorandum on Appeal, page 6;
[5] Memorandum on Appeal, page 6-7;

1. Whether CBTC complied with the statutory requirements for amendment of articles to extend the corporate term;
2. Whether failure to state the approval of the stockholders is a ground for disallowing the application for amendment;
3. Whether CBTC's reliance on the alleged CRMD processor's advice to file a request for extension entitles it to amend its articles despite the expiration of its corporate term.

We resolve these issues jointly, as follows:

The section 37 of the Corporation Code[6] ('Code') grants to a corporation the power to extend its corporate term as stated in its articles of incorporation:

> "Sec. 37. Power to extend or shorten corporate term. - A private corporation may extend or shorten its term as stated in the articles of incorporation when approved by a majority vote of the board of directors or trustees and ratified at a meeting by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members in case of non-stock corporations. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That in case of extension of corporate term, any dissenting stockholder may exercise his appraisal right under the conditions provided in this code."

The Code provides that a corporation's term of existence is extended through an amendment of the articles of incorporation made in accordance with the provisions of the Code.[7] In particular, section 16 of the Code provides how an amendment becomes effective:

> "Section 16. Amendment of Articles of Incorporation. - Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and **the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock**, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.

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[6] Batas Pambansa bilang 68 (01 May 1980).
[7] *Corporation Code*, section 11.

> The original and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation. Such articles, as amended shall be indicated by underscoring the change or changes made, and **a copy thereof duly certified under oath by the corporate secretary and a majority of the directors or trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the stockholders or members, shall be submitted to the Securities and Exchange Commission.**
>
> **The amendments shall take effect upon their approval by the Securities and Exchange Commission** or from the date of filing with the said Commission if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation."[8]

From the text of this provision in relation with section 37 of the Code, it is quite clear that, for a stock corporation like CBTC, in order for an amendment for extension of corporate term to become effective, the following steps are necessary: (i) a majority of the board of directors vote to adopt the amendment; (ii) the adoption of the amendment is ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock in a meeting called in accordance with section 37 of the Code; (iii) the corporation prepares a copy of the articles of incorporation, as amended, underscoring the changes made; (iv) the corporate secretary and a majority of the directors certify under oath that the amendments have been duly approved by the required vote of the stockholders; (v) the corporation submits the amended articles together with the secretary/directors' certification to the Commission for approval.

In the present proceedings, CBTC admits that the Director's Certificate that it submitted to CRMD on 22 December 2010 failed to state the fact that the amendment, extending its corporate term, had been duly approved by the required vote of the stockholders.[9] In fact, the Director's Certificate only states that "during the special meeting of the Board of Directors" of CBTC, the directors unanimously approved the amendment. There was nothing in CBTC's submission that expressly, or even impliedly, indicated that the amendment was submitted for the approval of the stockholders in a meeting duly called for that purpose.

However, CBTC declares that this failure was an inadvertent mistake. It alleges that during a special meeting on 13 December 2010, all of its directors together with its stockholders representing at least two thirds (2/3) of its outstanding capital stock approved the subject amendment. CBTC argues that this alleged fact 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.

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[8] *Emphasis supplied.*
[9] Memorandum on Appeal, page 10;

Such argument is contrary to the plain meaning of the statute, and thus, cannot be sustained.

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.[10]

To reiterate, the provisions of the Code plainly require five separate and distinct steps that a corporation must undertake in order for its amended articles to be effective. Each one of these steps must be done – that is, compliance with one step does not excuse non-compliance of another step. One of these steps is for the corporation to submit its amended articles of incorporation with a certification under oath by the corporate secretary and a majority of the directors attesting the fact that "said amendment or amendments have been duly approved by the required vote of the stockholders." The language of the provisions is explicit and unambiguous in requiring this certification. Since there is no doubt, any process of interpretation or construction dispensing with the necessity of the certification would be contrary to law.

However, we note that the *Director's Certificate* submitted by the CBTC may be considered as substantial compliance with the said requirement if the directors that approved the extension in the meeting as alleged in the document they executed also constitute stockholders owning at least two thirds (2/3) of the outstanding capital stock.

With this in mind, we ordered CBTC to submit its Stock and Transfer Book ('STB') for inspection.[11] After CBTC submitted its STB,[12] we found that the directors who executed the *Director's Certificate* own the following number of shares as of the date of the director's meeting alleged in the said document, or on 13 December 2010:

Director/Stockholder	***Shares subscribed***
Esperanza Sy Lim	43,357
Mariano McArnold S. Lim	21,834
Nelson S. Lim	12,866
Pua Chay	4,320
Henry T. Lim	3,677
Total	**86,054 shares**

[10] Luzon Surety Co., Inc. vs. Josefa Aguirre de Garcia, et al., G.R. No. L-25659, 31 October 1969, citing voluminous cases.
[11] Order dated 15 July 2011.
[12] CBTC's Compliance and Manifestation dated 29 July 2011.

CBTC's total outstanding capital stock is 160,000 shares. Two thirds (2/3) of 160,000 is 106,667. Thus, in order that the Director's Certificate may be deemed as substantial compliance, the directors that executed the said document must own at least 106,667 shares. However, the said directors only own 86,054 shares collectively, or a little more than half of the outstanding shares (53.78%). Thus, CBTC's Director's Certificate cannot be deemed as substantial compliance with the statutory requirement on certification of stockholders' vote.

Now, the question that arises is whether the Commission can still allow CBTC to submit compliance with the said statutory requirement even after its corporate term has already expired. CBTC argues that the Commission should accept the belated submission of the certification of the stockholders' vote considering the alleged fact that the required vote of the stockholders was actually obtained on 13 December 2010 before the CBTC's corporate term expired.

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. [13]

And, the same is true in other jurisdictions as well.[14] In one such jurisdiction namely Montana, there was the case of *Merges v. Altenbrand, et al.*[15] that involved analogous facts and issues to those confronting us now.

In the *Merges* case, the Supreme Court of Montana determined that the relevant statutes of that state require four steps to enable a corporation to avail itself of the statutory privilege of extending its term of existence: "These are: (1) A meeting of the stockholders, called as provided in section 3827, and a favorable vote by the requisite majority; (2) the preparation and execution of the required certificate evidencing the proceedings had; (3) the filing of the certificate with the clerk and recorder of the proper county; and (4) the filing of a certified copy thereof with the Secretary of State."

The court declared that all of these steps, taken together, are *causa sine qua non* – that is, the extension of corporate term is **"effectuated, not by the favorable vote at the stockholders' meeting, nor by the preparation of the certificate, nor by the filing of it with the clerk of the county, but by filing the copy with the Secretary of State after all the prerequisite steps have been taken."** And, since Montana's statutes indicate that a corporation is dissolved *ipso facto* when its corporate term expires, the court concluded that **all of these steps must be taken during the life of the corporation.**

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[13] Benguet Consolidated Mining Co. v. Pineda, G.R. No. L-7231, 28 March 1956; Alhambra v. SEC, G.R. No. L-23606, 29 July 1968.

[14] Merges v. Altenbrand, et al., 45 Mont. 355, 123 P. 21 citing Clark v. American Canal Co., 165 Ind. 213, 73 N. E. 1083, 112 Am. St. Rep. 217; People v. Anderson, 76 Cal. 190, 18 Pac. 308; La Grange R. Co. v. Rainey, 7 Cold. (Tenn.) 420; 10 Cyc. 1271; 1 Thompson on Corporations, § 243.

[15] Supra.

This pronouncement in the *Merges* case is more than persuasive in our jurisdiction. It is thoroughly consistent with the Code, and the prevailing jurisprudence relating thereto. In particular, in the case of *Alhambra Cigar and Cigarette Manufacturing Company, Inc. v. Securities and Exchange Commission,*[16] our Supreme Court agreed with Fletcher that:

> "Since the privilege of extension is purely statutory, **all of the statutory conditions precedent must be complied with in order that the extension may be effectuated**. And, generally these conditions must be complied with, and **the steps necessary to effect the extension must be taken, during the life of the corporation, and before the expiration of the term of existence as originally fixed by its charter or the general law, since, as a rule, the corporation is ipso facto dissolved as soon as that time expires.** So where the extension is by amendment of the articles of incorporation, the amendment must be adopted before that time. And, similarly, **the filing and recording of a certificate of extension after that time cannot relate back to the date of the passage of a resolution by the stockholders in favor of the extension so as to save the life of the corporation.**"[17]

Applying this to the present matter, CBTC should have complied with all the required steps for extension of its corporate term before it expired on 23 December 2010. In particular, CBTC should have submitted the required certification on the stockholders' vote to the Commission before the said expiry date.

We note that on 31 January 2011, CBTC submitted a revised *Director's Certificate* purportedly executed on 23 December 2010 and attesting that the "stockholders owning and representing at least two-thirds (2/3) of the outstanding capital stock" of CBTC approved the extension of its term in a special meeting held on 13 December 2010.[18] Further, on 28 February 2011, CBTC also submitted its minutes of the said special meeting executed on 14 January 2011.[19] However, we cannot accept these documents as substantial compliance since they were executed and submitted to the Commission when CBTC's term was already expired on or after 23 December 2010. CBTC was already *ipso facto* dissolved, and no longer had any power to amend its articles to extend its corporate term. Thus, the Commission can no longer accept the said documents or any other application for amendment, and CBTC's belated submission of the certification is inutile at this point.

We consider that CBTC cites the case of *St. Phillips Church v. Zion Presbyterian Church,*[20] where the Supreme Court of South Carolina held that the doctrine of relation will apply, where the delay is due to the neglect of the officer

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[16] G.R. No. L-23606, 29 July 1968.
[17] 8 Fletcher, Cyclopedia Corporations, Perm. ed., 1931, pp. 559-560, citing cases. Emphasis supplied
[18] Notice of Appeal dated 27 January 2011 Annex E.
[19] Memorandum of Appeal, Annex E.
[20] 23 S.C. 297.

with whom the certificate is required to be filed, or to a wrongful refusal on his part to receive it.

CBTC argues that the CRMD processor's refusal to accept the Director's Certificate for being in the "wrong form" on 22 December 2010 was unjustified. Thus, applying the doctrine of relation, its application for amendment should be deemed as successfully filed with the Commission, and the date of amendment should relate back to 13 December 2010 – the alleged date of the stockholders' meeting.

However, we rule that this argument has no merit. The CRMD processor did not err in rejecting CBTC's application for amendment. We emphasize that the CRMD processor is duty-bound to reject applications that do not conform with the minimum requisites expressly provided under the Code. However, it must be clarified that the CRMD processor's notation that the Director's Certificate was in the "wrong form," is inaccurate. The true basis for rejecting CBTC's application is that it did not comply with one of the substantive requirements under section 16 of the Code – that is, the certification on the stockholders' vote. In any case, the doctrine of relation as enunciated in the *St. Phillips Church* case has no application in the present proceedings since there was no neglect, or unjustified refusal on the part of the CRMD processor.

If there was any neglect under the circumstances, it was obviously committed by CBTC. Under section 11 of the Code, CBTC could have filed its amendment extending its corporate term with the Commission within five (5) years prior to the expiry date of 23 December 2010. The extension may even be made earlier for justifiable reasons. However, CBTC waited until 22 December 2010 or just a day before its expiration date to submit the required papers to the Commission. Even worse, CBTC failed to submit an essential requirement under section 16 of the Code, namely, the certification on the stockholders' vote. The undesired circumstance that CBTC finds itself in is clearly of its own making.

The Commission understands the adverse economic implications that will be suffered by CBTC and its employees as a consequence of the non-extension of its corporate term. However, we cannot do anything about such undesired consequences since allowing the extension of CBTC's corporate term is contrary to law.

In any case, it is only appropriate that a person bears the consequences of his own negligence. Further, the Commission is mindful that excusing CBTC from the required certification of the stockholders' vote in view of the alleged fact that such vote was in fact obtained in a meeting held prior to the expiration of the corporate term would open the flood gates to possible mischief – that is, any long-expired corporation could suddenly now claim that its stockholders actually held a meeting prior to the expiration date, and approved the extension of the corporation's term. Such a situation would obviously lead to uncertainty and disorder in the regulation of corporations to the prejudice of the public.

We note that CBTC mentions an opinion rendered by the Commission on 13 February 1980. In that opinion, RAMCAR Incorporated was allowed to file an amended articles of incorporation extending its corporate term even after it expired considering that the stockholders' approved the extension before the expiry. That opinion is not an appropriate guidance on this matter since it is clearly erroneous and contrary to law. A review of that opinion readily reveals that it lacks legal basis sufficient to overcome the plain meaning of the relevant provisions of the Code, and the prevailing jurisprudence in our jurisdiction as we have discussed earlier.

As a rule, the State, as represented by the government, is not estopped by the mistakes or errors of its officials or agents.[21] Thus, the Commission is not bound by any erroneous opinion that has been rendered in the past. In fact, it is duty-bound to rectify any previous mistakes, and ensure that its actions as the register of corporations always conform to law. Pursuant to such duty, we resolved to adopt the policy that "corporations with expired term of existence be not allowed to file any amended articles of incorporation extending their corporate life."[22] In a case brought to us on appeal from the CRMD, we have consistently applied this policy in accordance with law.[23] We see no compelling legal justification in reversing such policy.

Lastly, regarding CBTC's allegation that the CRMD processor advised it to file a request for extension of time to amend its articles, we understand that such allegation is disputed by the CRMD. We will not resolve this factual issue since we deem that it is not relevant to the resolution of the present proceedings. Regardless of what the CRMD processor advised CBTC to do, the fact remains that the latter did not file an application for amendment that was compliant with all the requisites under section 16 of the Code before the expiration of its corporate term. Again, as its corporate term has already expired, CBTC is *ipso facto* dissolved, and it no longer has any power to amendment its articles.

WHEREFORE, premises considered, the subject appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Mandaluyong City, 04 August 2011.

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[21] Republic v. Court of Appeals, G.R. No. 12115, 09 March 2001, 354 SCRA 148; Republic v. Intermediate Appellate Court, G.R. No. 69138, 19 May 1992, 209 SCRA 90; Republic v. De los Angeles, G.R. No. L-30240, 25 March 1988, 159 SCRA 264; Republic v. Aquino, 205 Phil. 141 (1983).
[22] SEC Resolution No. 394, series of 2008.
[23] In the Matter of the Extension of the Term of Cebu Bonded Warehousing Corporation, SEC En Banc Case No. 09-10-215, 09 December 2010.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE*
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