Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF:
AMENDMENT OF THE ARTICLES OF INCORPORATION AND BYLAWS OF PAMINTUAN ENTERPRISES (DAVAO), INC., doing business under the name and style APO VIEW HOTEL (SEC Reg. No. 28779)

Appellant,

- versus -

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.

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SEC *En Banc* Case No. 02-17-422

DECISION

This resolves the pending *Appeal*[1] filed, on 14 February 2017, by **PAMINTUAN ENTERPRISES (DAVAO), INC.**, doing business under the name and style of **APO VIEW HOTEL** (**Appellant**) seeking to reverse and set aside the Company Registration and Monitoring Department's (**CRMD**) denial of Appellant's application to amend its Articles of Incorporation: 1.) extending its corporate term; and 2.) increasing its authorized capital stock.

The Facts

Appellant is a domestic corporation duly registered with the Commission on 23 February 1966, under Company Registration No. 28779. Its principal office is at 150 J. Camus Street, Davao City. Its primary purpose is "*to engage in and undertake the general management, operation, and promotion for any person, association or other juridical entity carrying on any industrial and commercial enterprise or business of any kind and nature whatsoever*"[2]. It manages and operates the Apo View Hotel which is the second oldest hotel in the country, next to Manila Hotel.[3] Apo View Hotel, which started operations as a single proprietorship 69 years ago, has received numerous local and international awards.[4]

On 23 June 2003, Appellant filed a *Petition for Rehabilitation* with the Regional Trial Court, Branch 15 in Davao City docketed as S.P. No. 7054-2003 due to financial

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[1] Memorandum of Appeal dated 20 January 2017.
[2] Appellant's Amended Articles of Incorporation, Annex "14-A" of the Memorandum of Appeal.
[3] Paragraph 2.2 of the Memorandum of Appeal.
[4] Paragraphs 2.2.1-2.2.4 of the Memorandum of Appeal.

losses.[5] On 06 August 2007, a Revised Rehabilitation Plan (RRP) was approved by the rehabilitation court adopting a 15-year straight repayment scheme with a 3-year moratorium for loans obtained from banking institutions.[6]

On 24 February 2014, Appellant, foreseeing that it would not be able to pay the monthly amortizations as mandated in its RRP, authorized the sale of its 1,375,451 unissued shares of stock. Stockholders of record were allowed to exercise their preemptive rights within five (5) days from notice. Thereafter, Appellant would be allowed to issue the remaining unissued shares to third parties. It also approved the call for all shareholders with unpaid subscription to pay in cash on or before 30 April 2014.

On 05 May 2014, the Appellant's Board of Directors (**BOD**) authorized the sale of unissued shares to Euro Capital Land, Inc. (**ECLI**) and declared the shares of stock of Ma. Remedios Walker/Pamintuan, Miguel S. Pamintuan and Jose Ma. Pamintuan as delinquent and offered the same at public auction.[7]

Aggrieved by Appellant's actions, these alleged delinquent stockholders filed, in May 2014, a complaint[8] with the courts entitled "***Ma. Remedios Pamintuan, et al. vs. Pamintuan Enterprises, Inc.***"[9] (**Intra-corporate case**). The alleged delinquent stockholders sought to invalidate Appellant's actions in issuing a Notice of Call and selling their shares of stock to ECLI.

On the same vein, Appellant's BOD in a special meeting, held on 27 May 2014, passed a resolution[10] which states, among others, that:

> "RESOLVED, as it hereby resolved, that the Corporation shall **extend its corporate life for another fifty (50) years from 24 February 2016**. Accordingly, the FOURTH ARTICLE of the Articles of Incorporation of the Corporation be amended to read as follows:
>
> FOURTH: That the term for which said **corporation is to exist is FIFTY (50) YEARS from 24 February 2016**."

Thereafter, in June 2014, ECLI purchased the 245,000 delinquent shares at public auction. As a consequence, ECLI was able to obtain Appellant's 835,421 shares of stock which amounts to 41.77% control over the corporation.[11]

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[5] Pparagraph 2.6 of the Memorandum of Appeal.
[6] Paragraph 2.7 of the Memorandum of Appeal.
[7] Paragraph 2.9.4 of the Memorandum of Appeal.
[8] Annex "19" of the Memorandum of Appeal.
[9] Civil Case No. 35,603-14.
[10] Appellant's Board Resolution 28 July 2014 – Annex "2" of the Memorandum of Appeal
[11] Paragraph 2.9.8 of the Memorandum of Appeal.

On 17 June 2014, Appellant's stockholders, representing at least two-third (2/3) of the outstanding capital stock, ratified the BOD's resolution extending the life of the corporation.[12]

Sometime in October 2014, Appellant filed with the Commission's Davao Extension Office (**SEC-DEO**) its application for amendment of its Articles of Incorporation (**AOI**) for extension of its corporate term. However, the SEC-DEO refused to accept Appellant's application on the ground that the latter could not provide a *Certificate of No-Intra-Corporate Dispute* because of the presence of the intra-corporate case involving its delinquent stockholders.[13] Since then, Appellant made several attempts to file its amendments, however the same was denied by SEC-DEO.

On 12 February 2016, Appellant's BOD approved an increase of its Authorized Capital Stock (**ACS**) from 200 million pesos to 300 million pesos. On 19 February 2016, Appellant's stockholders, representing at least two-third (2/3) of the outstanding capital stock, ratified the said increase of ACS.[14]

On 09 January 2017, Appellant filed with the Commission's Main Office its application for extension of corporate term and increase of its ACS, together with some other amendments of its AOI and By-laws. However, on 10 January 2017, the Company Registration and Monitoring Department (CRMD), through its Financial Analysis and Audit Division (**FAAD**), denied Appellant's application on the ground that the latter's corporate term already expired.[15]

Hence, this appeal.

Appellant argues the following:

1.) The SEC Rules may be suspended in the broader interest of justice in order to best serve public interest;
2.) Appellant's stockholders have every intention to continue its operations by infusing fresh capital and increasing its capital from 200 million pesos to 300 million pesos – all these are geared towards the re-development of Apo View Hotel to make it competitive and more profitable;
3.) The extension of Appellant's corporate life would not in any way prejudice the state, the SEC and the public in general. On the other hand, the denial of Appellant's application would greatly prejudice its 200 employees, deprive the national government of the much needed revenue, and the local economy of its income from real taxes, etc.;

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[12] Fourth paragraph, Secretary Certificate dated 28 July 2014 – Annex "3" of the Memorandum of Appeal.
[13] Affidavit of Geraldine G. Cabalar dated 24 January 2017 – Annex "17" of the Memorandum of Appeal.
[14] Annexes "4" and "5" of the Memorandum of Appeal.
[15] Annex "1-A" of the Memorandum of Appeal.

Appellants, thus, prays that the Commission *En Banc* approve its application for amendment of its AOI to 1.) extend its corporate term for another 50 years; and 2.) increase its capital stock from 200 million pesos to 300 million pesos.[16]

In an *Order* dated 13 March 2017, the Commission *En Banc* directed the CRMD to file its *Comment* to Appellant's *Memorandum of Appeal*. However, as to date, CRMD did not file its *Comment* or any responsive pleading.

Thus, the instant case is now submitted for resolution.

Issue

The issues to be resolved is whether or not Appellant's application for extension of corporate term and increase of ACS should be allowed.

Ruling

We find instant appeal partially meritorious.

The power to approve or reject any amendment in the AOI of a corporation is vested with the Commission, as expressly provided under Section 16 of the Corporation Code (**Code**), to wit:

> "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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> 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.**
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> The **amendments shall take effect upon their approval by the Securities and Exchange Commission** or from the date of filing with the said

[16] Prayer of the Memorandum of Appeal.

Commission if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation."

Extension of Corporate Term

Section 11 of the Code provides that a corporation shall exist for a period not exceeding fifty (50) years from the date of its incorporation. This period may be extended for a period of not exceeding another fifty (50) years in any single instance, through an amendment of the corporation's AOI in accordance with the Code.[17] Likewise, it is provided in Section 37 of the Code that a corporation may extend its corporate term when approved by a majority vote of its BOD and ratified at a meeting by its stockholders representing at least two-thirds (2/3) of its outstanding capital stock.[18]

In the instant case, the Appellant was incorporated on 22 February 1966. Before the expiration of tis corporate term, Appellant's BOD approved the extension during a special meeting held on 27 May 2014.[19] This was thereafter ratified by the Appellant's stockholders, representing at least two-thirds (2/3) of the outstanding capital stock, in a special stockholders' meeting on 17 June 2014.[20]

However, when Appellant filed its application for extension of its corporate term sometime October 2014, SEC-DEO denied the same on the ground that it failed to submit a *Certificate of No Intra-Corporate Dispute* because there is an existing intra-corporate case pending before the courts. Appellant presented the Affidavit of Geraldine G. Cabalar[21] to support its claim that it attempted to file the subject application. Upon verification, it is SEC-DEO's policy that it does not receive or accept documents for filing that are incomplete.[22] For this reason, Appellant could not proceed with its application for extension of its corporate term.

Recently, the Commission *En Banc* passed **SEC RES. NO. 222, s. of 2017**, which states that:

"RESOLVED, to ADOPT as policy, **in cases for extensions of corporate term, the liberal approach adopted by the Supreme Court in its latest decisions in the cases of: CRMD and SEC versus Ching Bee Trading**

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[17] Section 11. Corporate term. – A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission. (6)

[18] "Section 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."

[19] Note 8, Supra.

[20] Note 10, Supra.

[21] Note 13, Supra.

[22] Memorandum dated 14 September 2017 from SEC-DEO.

Corporation (G.R. No. 205921, 12 November 2014) and 3-D Industries versus Northern Islands Company, Inc. (G.R. No. 194891, 9 January 2017). The En Banc is aware that the very recent 2017 decision is not yet final. However, considering that the legal principle enunciated therein is consistent with the current Commission's thrust to adopt policies that '**promote ease of doing business**' (i.e. the Corporation Code amendment on perpetual corporate term pending in Congress), the En Banc similarly espouses the liberal approach adopted by the Supreme Court. All previous pronouncements, policies or rules inconsistent with this latest policy shall be deemed repealed, revoked or amended.

RESOLVED FURTHER, That based on the aforementioned cases, and subject to compliance with the pertinent Corporation Code provisions, **all corporations similarly situated in relation to the matter of the expiration of its term of existence shall be ALLOWED to FILE their applications to amend their Articles of Incorporation to extend their corporate term** before the Company Registration and Monitoring Department, **which shall present it for approval of the Commission En Banc so as to continue as a going concern**, provided that (1) The intent to continue operations is supported by approvals given by the Board and Stockholders prior to the expiration of the term, as certified in a written document; (2) the application is filed before the CRMD and all the requirements of the latter are satisfied; and (3) all appropriate filing fees are paid for."

The above-stated new policy is anchored on the recent Supreme Court cases of *Company Registration and Monitoring Department and Securities and Exchange Commission vs. Ching Bee Trading* and *3-D Industries vs. Northern Islands Company, Inc.* In both of these cases, the Supreme Court allowed the filing of the subject corporations' - Ching Bee Trading Corporation (**CBTC**) and Northern Island Company, Inc. (**NICI**), application for extension of corporate term. It ruled that the Commission unreasonably refused to receive and process the applications of CBTC and NICI. This new liberal approach is intended for corporations applying to extend their corporate existence even if there are some deficiencies in their applications.

It was likewise resolved that those corporations which are similarly situated with CBTC and NICI, as mentioned in above-cited cases relative to corporate term extensions, will be allowed to file before the CRMD their applications to amend their AOI to extend their corporate term.

Furthermore, in the case of *HEPI vs. Herbosa*[23] decided by the Court of Appeals, it ruled that:

"We deem that the circumstances of the instant case allows for the **relaxation of the strict application of law, in the interest of substantial justice**. For one, the extension of **its corporate term was already passed and agreed**

[23] Hotel Enterprises of the Philippines, Inc. vs. Teresita Herbosa, et al., CA-G.R. SP No. 132339, 02 December 2014 – this case was no longer elevated to the Supreme Court.

> upon by all the directors and stockholders during the February 24, 2012 meeting prior to its expiration on July 30, 2012. Only the said meeting was not properly adjourned, matters taken up not certified, and the proper filing with the SEC of the necessary documents unaccomplished due to the deadlock among the parties. x x x
>
> Furthermore, this Court is not blind to the **economic implications were We to disallow the continuation of HEPI's corporate existence**. Currently, Midas employs hundred of employees which stand to lose their gainful employment should it cease to operate. x x x
>
> However, **the Court cannot see any prejudice to the State or the general public if the petitioner is allowed to continue as a going concern**. It being a legitimate business operating a hotel and casino. On the other hand, the cessation of its business is prejudicial to its significant stakeholders such as its stockholders, employees and creditors."

Applying the foregoing, Appellant is similarly situated with HEPI. They are both engaged in the hotel business. They are both distressed corporations infused with new capital to be financially restored. Both of them applied to extend their respective corporate terms. However, HEPI and Appellant differ in the time of filing of their amendment of their AOI. HEPI filed its application after the expiration of its corporate term, while Appellant persistently filed its application with SEC-DEO before the expiration of its corporate term but the latter consistently refuse to receive the same on the ground of the former could not present a *Certificate of No Intra-Corporate Dispute*.

In light of the liberal approach, Appellant should now be allowed to file its application for extension of corporate term before the CRMD. An outright denial of such application will result in the closure of a going concern, which is the second oldest hotel in the country. As similarly ruled by the Court of Appeals in the *HEPI* case, there would be economic implications if we would deny Appellant's application for extension of corporate term. Also, the State or the general public will not be prejudiced if we would allow the application for the extension of Appellant's corporate term.

Likewise, it is evident that Appellant's stockholders do not intend for the closure of the corporation for the reason that they themselves are contending with the control of the corporation in the intra-corporate case. Essentially, Appellant's stockholders are challenging each other in the intra-corporate case is for the protection of their rights and interests in an existing corporation. The *Certificate of No Intra-Corporate Dispute* is merely intended to ensure that the corporation has complied with the required number of votes of its stockholders as provided by law. Thus, it is unwise if we deny Appellant's application for extension of its corporate term simply because of the absence of such certificate.

However, the Commission is only allowing the filing of Appellant's application for extension of its corporate term, this should not be considered as the approval of the same.

Increase of Authorized Capital Stock

Section 38 of the Code provides that no corporation shall increase or decrease its capital stock unless approved by a majority vote of its BOD and a vote of its stockholders, representing two-thirds (2/3) of its outstanding capital stock, in a meeting duly called for the said purpose. Any increase or decrease of a corporation's ACS shall be approved by the Commission.[24]

In the instant case, Appellant's BOD, on 12 February 2016, approved the increase of its ACS from 200 million pesos to 300 million pesos. Thereafter, this was ratified by its stockholders, representing at least two-thirds (2/3) of the outstanding capital stock, in a meeting held on 19 February 2016. However, it was not allowed to file its application for increase of its ACS because of the existence of an intra-corporate case with the courts.

Relative thereto, SEC Order No. 242-2013 provides that:

> "7. In the case of an **intra-corporate dispute pending or already the subject of on-going proceedings before any court, CRMD shall advise the applicant that its application is deferred until after final resolution of said dispute or proceedings.**"

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[24] Section 38. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. – No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder 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.
A certificate in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and the secretary of the stockholders' meeting, setting forth:
(1) That the requirements of this section have been complied with;
(2) The amount of the increase or diminution of the capital stock;
(3) If an increase of the capital stock, the amount of capital stock or number of shares of no-par stock thereof actually subscribed, the names, nationalities and residences of the persons subscribing, the amount of capital stock or number of no-par stock subscribed by each, and the amount paid by each on his subscription in cash or property, or the amount of capital stock or number of shares of no-par stock allotted to each stock-holder if such increase is for the purpose of making effective stock dividend therefor authorized;
(4) Any bonded indebtedness to be incurred, created or increased;
(5) The actual indebtedness of the corporation on the day of the meeting;
(6) The amount of stock represented at the meeting; and
(7) The vote authorizing the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.
Any increase or decrease in the capital stock or the incurring, creating or increasing of any bonded indebtedness shall require prior approval of the Securities and Exchange Commission.
One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed with the Securities and Exchange Commission and attached to the original articles of incorporation. From and after approval by the Securities and Exchange Commission and the issuance by the Commission of its certificate of filing, the capital stock shall stand increased or decreased and the incurring, creating or increasing of any bonded indebtedness authorized, as the certificate of filing may declare: Provided, That the Securities and Exchange Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by the sworn statement of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty-five (25%) percent of such increased capital stock has been subscribed and that at least twenty-five (25%) percent of the amount subscribed has been paid either in actual cash to the corporation or that there has been transferred to the corporation property the valuation of which is equal to twenty-five (25%) percent of the subscription: Provided, further, That no decrease of the capital stock shall be approved by the Commission if its effect shall prejudice the rights of corporate creditors.
Non-stock corporations may incur or create bonded indebtedness, or increase the same, with the approval by a majority vote of the board of trustees and of at least two-thirds (2/3) of the members in a meeting duly called for the purpose.
Bonds issued by a corporation shall be registered with the Securities and Exchange Commission, which shall have the authority to determine the sufficiency of the terms thereof. (17a)

It is clear in SEC Order No. 242-2013 that when there is an intra-corporate dispute, a corporation's application for increase of its ACS shall be deferred until there is a final resolution of the said dispute. In other words, the Commission does not have any similar liberal approach policy unlike in corporate term extension cases. Hence, Appellant's application for increase of its ACS should be deferred until its intra-corporate dispute has been resolved.

WHEREFORE, premises considered, the instant appeal is hereby **PARTIALLY GRANTED**. The Company Registration and Monitoring Department is hereby **DIRECTED** to allow the filing of PAMINTUAN ENTERPRISES (DAVAO) INC.'s application for extension of corporate term following the rules set by the Commission.

SO ORDERED.

Pasay City; 19 October 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. ITERBO
Commissioner

EMILIO B. AQUINO
Commissioner