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

In the Matter of Amendment of the Articles of Incorporation:

SEC En Banc Case No. 01-13-284
For: Application for Extension of Corporate Term

HOTEL ENTERPRISES OF THE PHILIPPINES, INC.
Appellant.
x----------x

DECISION

Before the Commission En Banc is an appeal from the Order issued by the Company Registration and Monitoring Department (CRMD), dated January 14, 2013, denying the appellant's letter, dated December 27, 2012, asking the CRMD to accept its application for the amendment of incorporation and by-laws together with all the required supporting documents.

The relevant facts, as alleged, argued, verified and certified by the appellant[1] in its Memorandum on Appeal[2], are as follows:

The appellant was registered with the Commission as a stock corporation on July 31, 1962 for a term of fifty (50) years or until July 30, 2012. The appellant has an outstanding capital stock of One Hundred Million Pesos (Php 100,000,000.00) divided into 100,000 common shares with a par value of One Thousand Pesos (P 1,000.00) per share.

On January 13, 2010, Eco Leisure & Hospitality Holdings, Inc. (Eco Leisure) became the registered owner of 93,727 appellant shares representing approximately 100% of appellant's outstanding capital stock. In 2011, Illido Management Corporation (Illido) purchased 46,863 of appellant's shares from Eco Leisure representing approximately 50% of appellant's outstanding capital stock.

[1] Through its Corporate Secretary, Atty. Roland S. Ang.
[2] Dated January 28, 2013.

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On December 8, 2011, appellant entered into a Contract of Lease and Marketing and Cooperation Agreement with the Philippine Amusement and Gaming Corporation (PAGCOR) with a term of at least ten (10) years.

On July 30, 2012, the appellant's original 50-year term expired.

In November 2012, Eco Leisure purchased back from Illido the 46,863 shares comprising all of the latter's shares in appellant. In turn, Eco Leisure sold to Leisure & Resorts World Corporation (LRWC) the 46,863 share and an additional 983 shares, representing approximately 51% of appellant's outstanding capital stock. LRWC is a publicly listed company whose shares are listed in the Philippine Stock Exchange (PSE).

On December 17, 2012, in a joint special meeting, appellant's stockholders and board of directors unanimously approved the amendment of appellant's articles of incorporation and by-laws for the purpose of, among others, extending its corporate term for another 50 years from the date of the original expiration.

On December 26, 2012, appellant filed with the Commission its application for amendment of articles of incorporation and by-laws together with the required supporting documents[3]. The CRMD verbally informed the appellant that it could not accept and process the appellant's application after the expiration of its corporate term.

On January 2, 2013, appellant filed an appeal letter with the CRMD for the latter to reconsider its previous decision and process appellant's application[4].

On January 14, 2013, the CRMD, during a formal conference with the appellant[5], formally denied its application for the amendment of articles of incorporation and by-laws. The CRMD based its decision on SEC Resolution 394, Series of 2008. Thus, the appellant has fifteen (15) days or until January 29, 2013 to file and perfect its appeal from the CRMD's denial as provided under Rule XI of the SEC's 2006 Rules of Procedure.

On January 25, 2013, appellant formally notified the CRMD of its intention to appeal its decision dated January 14, 2013 to the Commission En Banc.

On January 28, 2013, appellant filed with the Commission En Banc its Memorandum on Appeal and paid its corresponding docket fees.

The appellant further argues in its Memorandum on Appeal that the CRMD erred in not considering factors and exceptional circumstances which could have sufficiently

[3]Annex "C", Memorandum on Appeal dated January 28, 2013.
[4]Annex "D", supra.
[5]Annex "E", note 3, supra.

explained and justified appellant's inability to amend its articles of incorporation extending its corporate term on or before July 31, 2012, to wit:

> "3.3 **Prior to the acquisition by LRWC of approximately 51% of appellant's outstanding capital stock on November 2012, no formal meeting of its stockholder was ever organized, held or conducted.** From December 2011 to the expiration of appellant's corporate life in July 2012, Eco Leisure and Illido each owned approximately 50% equity in appellant. Since the vote of at least 2/3 of its outstanding capital stock is required to amend appellant's articles of incorporation, it was necessary, therefore, for both Eco Leisure and Illido to participate or, at least, be represented in the required stockholders meeting. **Unfortunately, the conduct of a stockholders' meeting had been deferred** since the representatives in appellant of both Eco Leisure and Illido were then way too focused in addressing and resolving overwhelming management/operational concerns and intra-corporate issues. When Eco Leisure finally decided to buy back all of Illido's shares in appellant and enter into a new partnership with LRWC, the corporate term of appellant had already expired."[6]

Nonetheless, the appellant maintains that it has every intention of continuing, maintaining, improving and eventually expanding its business and operations. Appellant has, in fact, an existing agreement with PAGCOR with a term of at least ten (10) years, expiring in December 2021. Moreover, appellant claims that the interest of the appellant's creditors, employees and stakeholders should be duly considered and given weight in the decision to be rendered by the Commission. Finally, appellant alleges that its continued existence would greatly benefit the State in a number of ways. The appellant claims that it has paid and remitted in 2011 over Php 13 Million in taxes and licenses. It has also paid Php 16 Million in salaries and wages in 2011 alone.

On February 6, 2013, the Commission En Banc issued an Order directing CRMD to file a Reply Memorandum to appellant's Memorandum on Appeal within ten (10) days from receipt of the Order. The CRMD did not file any pleading.

On August 7, 2013, the appellant filed with the Commission En Banc its Supplement [to the Memorandum on Appeal dated January 28, 2013] dated August 6, 2013 (Supplement). The appellant now claims that the approval of the Board of Directors and the ratification of the stockholders of a resolution to extend its corporate term were made on February 24, 2012 and that the stockholders and directors' meeting held on December 17, 2012 merely reaffirmed the appellant's intention to extend its corporate term, thus:

> "2.7 **Within appellant's original 50-year term, or on 24 February 2012, appellant held a joint special meeting of its stockholders and directors.**

[6] Emphasis supplied.

It was during this meeting that appellant Board of Directors and shareholders representing 99.55% of its outstanding capital stock unanimously approved a resolution to extend appellant's corporate term for fifty (50) years, or until 30 July 2062.

2.8 At this same meeting, however, the Board proceeded to discuss matters concerning the operations and management of the Midas Hotel and Casino. **It was during these discussions that Atty. Ang became embroiled in a heated, emotional and highly contentious argument with representatives of the Illido group, mainly regarding certain financial, operational and policy issues concerning how the Midas Hotel and Casino should be managed.** As a direct result thereof, Atty. Ang immediately tendered his resignation as Corporate Secretary and director of appellant. Atty. Ang's resignation, however, was not acted upon by the Board during the same meeting.

2.9 On 27 February 2012 and 01 March 2012, pursuant to his resignation just several days before, Atty. Ang turned over all of appellant's corporate records and documents in his possession to appellant's then Vice President, Ms. Mary Somera-Demetillo. Even at this point, however, the Board had not formally acted upon and accepted Atty. Ang's resignation.

2.10 As Atty. Ang's resignation left only six (6) active directors in appellant's Board, three (3) nominees each from Eco Leisure and Illido, a stalemate ensued, which rendered appellant unable to pass or approve any further resolution. Further, the Board's failure to act upon Atty. Ang's resignation and to designate or elect an acting or a new Corporate Secretary **left appellant in a predicament where no one could certify matter's taken up during any of appellant's meetings, including but not limited to, the previously approved resolution to extend appellant's corporate term for fifty (50) years, or until 30 July 2062.**

2.11 **On 30 July 2012, and despite the approval of a resolution to extend its corporate life, appellant's original 50-year term expired without a formal application being filed with the Commission.**

2.12 **[I]n November 2012**, Eco Leisure purchase back from Illido 46,863 shares comprising all of the latter's shares in appellant. In turn, Leisure & Resorts World Corporation (LRWC) purchased from Eco Leisure 46,863 shares and an additional 938 shares, representing approximately 51% of appellant's outstanding capital stock. This acquisition was well-documented in widely-read publications such as the Philippine Star and the Manila Standard.

2.13 As a result of the departure of Illido and the entrance of a new stockholder, Atty. Ang was immediately re-elected as Corporate Secretary of appellant. **Atty. Ang then regained possession and custody of appellant's records and documents.**

2.14 On 17 December 2012, a joint special meeting primarily organized and arranged by Atty. Ang, appellant's stockholders and board of directors unanimously approved the amendment of appellant's articles of incorporation and by-laws for the purpose of, among others, re-affirming its intention of extending appellant's corporate term for another fifty (50) years from the date of the original expiration."

The issue is whether or not CRMD erred in denying appellant's application for the extension of its corporate term.

We rule against appellant.

Section 3-6, Rule III of the 2006 SEC Rules of Procedure[7] enumerates the prohibited pleadings in proceedings before the Commission, *viz.*:

> "Section 3-6. The following pleadings or any submission that is filed or made under a similar guise or title is not allowed: xxx
>
> (h) motion for leave to amend pleadings.
>
> Should one be filed, said prohibited pleading or submission shall be automatically expunged from the records of the case."

A pleading may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name or a party or a mistaken or inadequate allegation or description in any other respect, so that that the actual merits of the controversy may speedily be determined xxx.[8] On the other hand, a supplemental pleading may set forth transactions, occurrences, or events which have happened since the last date of the pleading sought to be supplemented[9]. In this case, the pleading filed by the appellant, denominated as a supplement to the memorandum on appeal, amends the original pleading. The new allegation in the Supplement, that a stockholders and directors' meeting was held on February 24, 2012, is really an amendment. It is intended as a correction of a mistaken or an inadequate allegation or description of how the alleged board resolved and the stockholders ratified the amendments to the appellant's articles of incorporation. Indeed, such act of the appellant's directors and stockholders was not a transaction, occurrence or event which has happened since the last date of the memorandum on appeal. Accordingly, said amendment, made and filed under the guise

[7] Hereinafter referred to as the "2006 SEC Rules".
[8] Section 1, Rule 10, Revised Rules of Court.
[9] Section 6, Note 8, supra.

of a Supplement, is not allowed under the 2006 SEC Rules and is automatically expunged from the records of this case.

Assuming for the sake of argument that such Supplement is not a prohibited pleading under the 2006 SEC Rules, still the Commission cannot consider appellant's improbable allegation that **on 24 February 2012, it held a joint special meeting of its stockholders and directors,** because of the following reasons.

First, the appellant's new allegation in the Supplement does not correct a mistake or an inadequate allegation or description but contradicts and conflicts with the following allegations in its Memorandum on Appeal and the attached evidence:

A. The last paragraph of appellant's letter dated December 27, 2012[10] is adverse to appellant's new allegation. The appellant earlier claimed that:

> "xxx **Prior to the acquisition by LRWC of approximately 51% of HEPI's outstanding capital stock in November 2012, no formal meeting of stockholders was organized, held or conducted.** Each of Eco Leisure and Illido previously owned approximately 50% equity in HEPI. The vote of 66.67% or 2/3 of outstanding capital stock is required in order to amend HEPI's article of incorporation. **It was necessary therefore for both Eco Leisure and Illido to be represented in the required stockholders meeting, the holding of which, had unfortunately been deferred.** Representatives in HEPI of both Eco Leisure and Illido were then way too focused in addressing and resolving overwhelming intra-corporate issues and management/operational concerns. When Eco Leisure finally decided to buy back all of Illido's shares in HEPI and enter into a new partnership with LRWC, the corporate term of HEPI had expired."[11]

B. Paragraph 3.3 of appellant's Memorandum on Appeal positively asserted and reiterated the afore-quoted portion of appellant's December 27, 2012 letter.

C. The first paragraph of the Notice of Joint Special Meeting of the Stockholders and Board of Directors[12] which was published in Philippine Daily Inquirer on December 12, 2012 claims that:

> "The Joint Special Meeting of the Stockholders and Board of Directors of HOTEL ENTERPRISES OF THE PHILIPPINES, INC., which owns and operates the Midas Hotel, will be held on Monday; 17 December 2012, at 2:00 p.m, at the Midas Hotel located at 2702 Roxas Boulevard, Pasay City.

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[10] Annex "D", note 3, supra.
[11] Emphasis supplied.
[12] Annex "H", note 3, supra.

> Stockholders shall approve the amendment of the Articles of Incorporation and By-Laws of the Corporation and the filing of the proper application with the Securities and Exchange Commission (SEC) in order to carry on the business and operation of the Midas Hotel. xxx"

Second, Atty. Roland S. Ang, the alleged corporate secretary at the appellant's February 24, 2012 stockholders' and directors' meeting, verified and certified[13] both the Memorandum on Appeal and the Supplement. Thus, he should not have withheld or omitted the "factual milieu which effectively prevented [the appellant] from extending its corporate term prior to its expiration"[14] at the time he verified, to the best of his knowledge, the contents of the Memorandum on Appeal. If, as Atty. Ang claims, he was elected back as appellant's Corporate Secretary in November 2012, one wonders why, despite knowing that the alleged meeting and approval of the extension of term happened on February 24, 2012, he still: (1) let the December 17, 2012 special stockholders' and directors' meeting to happen in order to approve the extension of appellant's corporate term; (2) let the filing of appellant's application for extension of its corporate term based on the December 17, 2012 meetings; and (3) certify under oath that the contents of the Memorandum on Appeal, including the non-holding of any stockholders' meeting prior to November 2012, were true and correct to the best of his knowledge and on the basis of the records in his possession. His own conduct, therefore, discredits his whole story. His manner of presenting his case gives rise to doubts as to the truthfulness of his certification that the extension of appellant's corporate term was approved on February 24, 2012. Said certification, therefore, is self-serving.

Third, bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules.[15] The appellant, in the Supplement, insists that "on 24 February 2012 xxx its Board of Directors and shareholders representing 99.55% of its outstanding capital stock unanimously approved a resolution to extend appellant's corporate term for fifty (50) years, or until 30 July 2062"[16]. Then, the appellant claims that "no one could certify matter's taken up during any of appellant's meeting, including but not limited to, the previously approved resolution to extend appellant's corporate term for fifty (50) years"[17]. Finally, appellant maintains that, "on December 17, 2012 xxx appellant's stockholders and board of directors, unanimously approved the amendment, reaffirming its intention of extending appellant's corporate term[18]. These allegations, however, were

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[13] Dated 28 [25] January 2013.
[14] Second paragraph, Nature and Ground for Addendum, page 1, Supplement.
[15] *Philippine National Bank v. CA*, 266 SCRA 136, January 6, 1997; *Martinez v. National Labor Relations Commission*, 272 SCRA 793, May 29,1997. Cited in Emilia Manzano vs Miguel Perez, Sr. et al., G.R. No. 112485, August 9, 2001.
[16] Paragraph 2.7, Supplement.
[17] Paragraph 2.10, Supplement.
[18] Paragraph 2.14, Supplement

not proven by any documentary evidence aside from the self-serving certification of Atty. Ang[19] that a joint special meeting of the Board of Directors and stockholders of the appellant was held on February 24, 2012, approving such amendments to the articles of incorporation. When considered with the Notice, and the Directors' and Secretary's Certificate for the December 17, 2012, as well as the appellant's assertions in its letter of December 27, 2013 and in its Memorandum on Appeal, said self-serving certification, Annex B of the Supplement, carries little or no weight at all.

Falsus in uno, falsus in omnibus. Accordingly the new allegation is inherently improbable and is unsubstantiated.

Assuming for the sake of argument that the extension of appellant's corporate term was, indeed, approved by the necessary vote of its directors and stockholders on February 24, 2012, still, its application therefor with the Commission was properly denied for having been filed after the expiration of its term.

The Corporation Code[20](Code) provides that a corporation's term of existence may be extended through an amendment of the articles of incorporation, made in accordance with the provisions of the Code. In particular, Sections 11[21], 16[22] and 37[23] of

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[19] Annex "B", Supplement.

[20] Batas Pambansa Blg. 68 (1980)

[21] "Sec. 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.

[22] Sec. 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.

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."

the Code provide how this type amendment becomes effective. Pursuant thereto, the Commission issued SEC Resolution No. 394, Series of 2008, which provides:

"SEC RES. NO. 394, s. of 2008

> **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."

From the foregoing, it is clear that for an amendment for extension of corporate term to be effective all of the following should be done before the expiration of the corporation's corporate term: (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 (2/3) of the outstanding capital stock in a meeting duly called in accordance with Section 37 of the Code; (3) the corporation prepares a copy of the articles of incorporation, as amended, underscoring the changes made; (4) 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; (5) the corporation submits the amended articles together with the secretary/directors' certification to the Commission for approval.

However, the appellant admits in its Memorandum on Appeal that the approval by the stockholders and the board of directors of the amendment of its articles of incorporation and by-laws for the purpose of, among others, extending its corporate term, was done on December 17, 2012 or after the expiration of its corporate term on July 30, 2012. In fact, the appellant further argued, in paragraph 3.11 thereof, that:

> "Such intention to continue with the business is also evidence by the **appellant's execution of remedial actions to overcome the expiration of its corporate life mere months from the expiration of its corporate term.** As pointed out, barely a month after LRWC's purchase of appellant's shares, LRWC and Eco Leisure immediately called and held a stockholder's meeting approving the amendment of the articles of incorporation to extend its corporate term.

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[23] 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. (n)

Subsequently, a formal application for amendment of articles of incorporation was then presented to this Honorable Commission for filing."[24]

Accordingly, the CRMD correctly denied the appellant's application for the amendment of it articles of incorporation extending its corporate life. SEC Resolution 394, Series of 2008, which is pursuant to the intent of the Corporation Code, is explicit. Corporations with expired terms of existence shall not be allowed to file any amended articles of incorporation extending their corporate term.

The CRMD's denial of appellant's application for extension of corporate term is also in accordance with the recent decision of the Supreme Court, in **Cebu Bonded Warehousing Corporation vs. Fe Barin, in her capacity as Chairperson of the Securities and Exchange Commission, En Banc**[25], which affirmed the Court of Appeal's Decision dated March 30, 2012 and Resolution dated November 23, 2012[26], for failure of therein petitioner to show any reversible error in the challenged decision. Said the Court of Appeals:

"The Corporation Code, the law which governs the formation and organization of corporations, provides that a corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless such period is extended, xxx.

Upon the expiration of the period fixed in the articles of incorporation in the absence of compliance with the legal requisite for the extension of the period, the corporation ceases to exist and is dissolved *ipso facto*. The corporate term as originally stated in the articles of incorporation may be extended by an amendment of the corporation's articles of incorporation *in accordance with the Code*.

Section 37 of the Corporation Code provides for the procedure for extending or shortening the corporate term, xxx.

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Since the life of the corporation is just a concession of the State, the power to extend the corporate term is not an inherent right. The amended articles of incorporation must be submitted to the Securities and Exchange Commission for approval, as provided in Section 16 of the Corporation Code: xxx.

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[24] Emphasis supplied.
[25] G.R. No. 204549, February 6, 2013.
[26] CA-G.R. S.P. No. 117393.

The *parimateria* rule of statutory construction dictates that laws and contracts should be construed as to harmonized and give effect to the different provisions thereof. **When read together, it becomes clear from the provisions that the corporate term is deemed extended only upon the approval by the SEC of the amendments to the articles of incorporation, or if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation, the corporate term is deemed extended on such date of filing with the SEC. Since the approval by the SEC of the amendment to the articles of incorporation is an indispensable requirement for the extension of the life of a corporation, such approval must also come before its expiration. Specificity is not necessary for, not only is it implicit therefrom, logic likewise dictates that when the corporate life of the corporation was ended, there is nothing more to extend. Where the term of the corporation had already elapsed, there is nothing to renew for the corporation is already inexistent.**"[27]

Moreover, the Court of Appeals, in its Resolution[28] denying the Motion for Reconsideration of Cebu Bonded ruled that:

"We disagree. **As extensively discussed in Our Decision, SEC Resolution No. 394, Series of 2008 is more in accord with the intent of the law.** To strike it down just because it was a substantial change from a previous SEC resolution would be tantamount to saying that erroneous interpretations of law made by government agencies tasked to implement them are immutable and incurable.

Petitioner cannot insist that the opinion rendered by the SEC in the case of Ramcar Incorporated be similarly applied to its case. SEC opinions are merely advisory. As between the law and the SEC opinion, the law prevails, and it is the courts that finally determine what the law means.

As to petitioner's averment that SEC Resolution No. 394, Series of 2008 is an administrative issuance that is a legislative rule, as opposed to being merely an interpretative rule, and therefore requires publication, We find otherwise. **The questioned SEC Resolution is merely interpretative in nature for it gives no real consequence more than what the law itself has already prescribed, and is designed to provide guidelines to the law which it is in charge of enforcing.** No publication is necessary. This is in contrast to a legislative rule which is primary legislation by providing the details thereof, hence the requirement of public hearing and publication."[29]

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[27] Emphasis Supplied, Page 5, Note 25, supra.
[28] Promulgated on November 23, 2012.
[29] Emphasis supplied.

In view of the foregoing, the appellant's term of existence expired by operation of law and is legally dead as of July 30, 2012 for all intents and purposes. Therefore, the Commission cannot consider the alleged factors and exceptional circumstances which, according to the appellant, could have sufficiently explained and justified its inability to amend its articles of incorporation. This is because the corporation has "overstepped the limits of its limited existence. No life there is to prolong."[30]

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Let the CRMD be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, October 1, 2013.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. QUETO
Commissioner

MANUEL HUBERTO B. GAITE *
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA F. IBE
Commissioner

*on official leave

[30] Alhambra vs. SEC, G. R. No. L-23606, July 29, 1968.