Republic of the Philippines
Department of Finance
Securities and Exchange Commission

SEC MEMORANDUM CIRCULAR NO. 5
Series of 2022.

TO : ALL CONCERNED

SUBJECT : Guidelines on Corporate Dissolution under Sections 134, 136 and 138 of the Revised Corporation Code

---

WHEREAS, Sections 133 to 138 of Republic Act No. 11232 otherwise known as the Revised Corporation Code of the Philippines (RCC) provide for the classification, requirements and procedure for corporate dissolution;

WHEREAS, voluntary dissolution where no creditors are affected under Section 134 of the RCC, dissolution by shortening of corporate term under Section 136 of the RCC and involuntary dissolution under Section 138 of the RCC shall be under the authority of the Company Registration and Monitoring Department (CRMD) and Securities and Exchange Commission (SEC) Extension Offices.

WHEREAS, voluntary dissolution where creditors are affected under Section 135 of the RCC shall be under the authority of the Office of the General Counsel (OGC).

WHEREAS, Section 15 of the RCC provides that unless otherwise prescribed by the RCC 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 the dissenting stockholders in accordance with the provisions of the RCC. The articles of incorporation of a nonstock corporation may be amended by the vote or written assent of majority of the trustees and at least two-thirds (2/3) of the members. XXX

WHEREAS, under Section 6(h) of the RCC, holders of non-voting shares shall nevertheless be entitled to vote on the issue of dissolution of the corporation; and

WHEREAS, under Section 50 of the RCC, notice of stockholders' or members' meetings shall be sent through the means of communication provided in the by-laws, which notice shall state the time, place and purpose of the meetings. Each notice of meeting shall further be accompanied by the following:

a.) The agenda for the meeting;
b.) A proxy form which shall be submitted to the corporate secretary within a reasonable time prior to the meeting;

Published:
Manila Standard, 9 March 2022
Business Mirror, 9 March 2022

Filed with UP Law Center: 8 March 2022

c.) When attendance, participation, and voting are allowed by remote communication or in absentia, the requirements and procedures to be followed when a stockholder or member elects either option; and
d.) XXX

NOW THEREFORE, in order to standardize the procedure on corporate dissolution under the authority of the CRMD and SEC Extension Offices, the Commission hereby promulgates the following requirements and guidelines for corporate dissolution under Sections 134, 136 and 138 of the RCC:

A. Voluntary dissolution where no creditors are affected under Section 134 of the RCC.

Section 1. Verified Request for Dissolution. – If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution shall be initiated by filing, with the CRMD or SEC Extension Office, a **verified request** for dissolution signed by the corporation's duly authorized representative, stating:

a. The corporate name, SEC registration number, principal office of the corporation and email address of the corporation as required pursuant to SEC Memorandum Circular (MC) No. 28, Series of 2020;

b. The complete name, position in the corporate structure of the corporation, and mailing address of the authorized representative of the corporation;

c. That the corporation requests for the dissolution of the corporation, and that the dissolution does not prejudice the rights of any creditor having a claim against it;

d. The reason for the dissolution;

e. The form, manner, and time when the notices were given; Provided that: 1.) at least twenty (20) days prior to the meeting, notice shall be given to each shareholder or member of record personally, by registered mail, or by any means authorized under its by-laws, regardless of whether or not they are entitled to vote at the meeting, in the manner provided in Section 50 of the RCC; 2.) the notice shall state the time, place and object of the meeting; 3.) the notice of the time, place and object of the meeting shall be published **once prior to the date of the meeting** in a newspaper published in the place where the principal office of said corporation is located, or if no newspaper is published in such place, in a newspaper of general circulation in the Philippines; and 4.) the notice shall state that the purpose of the meeting is to vote on the dissolution of the corporation, and shall be accompanied by the following:
    i. The agenda for the meeting;
    ii. A proxy form; and
    iii. The requirements and procedures to be followed for attendance, participation, and voting by remote communication or in absentia, if applicable.

f. Names of the stockholders and directors, or members and trustees, who approved the dissolution; Provided, that the **majority** of the directors or trustees, and the stockholders owning or controlling at least a **majority** of the outstanding capital stock ***including the holders of non-voting shares*** or **majority** of the members voted for the dissolution of the corporation;

g. That the above-mentioned stockholders and directors, or members and trustees, are the duly elected directors or trustees, and the stockholders or members of record as of the date of the meeting;

h. The date, place, and time of the meeting in which the vote was made;

i. Details of publication, such as: 1.) name of the newspaper; 2.) complete name of the publisher; 3.) principal office of the publisher; 4.) area of circulation of the newspaper; 5.) date when the notice was published; and 6.) contents of the notice as published; and

j. That the corporation has no pending case involving intra-corporate dispute;

Section 2. Verification and Certification Against Forum Shopping. - The Verified Request for Dissolution shall contain an affidavit and certification duly signed by the authorized representative of the corporation, which shall allege the following attestations:

a.) The allegations in the Verified Request for Dissolution are true and correct based on his or her personal knowledge, or based on authentic documents;

b.) That he/she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein;

c.) If there is such other pending action or claim, a complete statement of the present status thereof; and

d.) If he/she should thereafter learn that the same or similar action or claim has been filed or is pending, he/she shall report that fact within five (5) calendar days therefrom to the Company Registration and Monitoring Department, or the appropriate SEC Extension Office;

Section 3. Supporting Documents. –The following shall be filed with the Verified Request for Dissolution:

a.) A notarized copy of the board resolution or directors'/trustees' certificate authorizing the dissolution and designating an authorized representative

to file the verified request for dissolution, signed by a majority of the board of directors or trustees and countersigned by the secretary of the corporation;

b.) Publisher's Affidavit of Publication of the Notice of Meeting;

c.) Latest due General Information Sheet (GIS);

d.) Audited Financial Statements (AFS) as of last fiscal year, *except:*
1. *Where the applicant has ceased operations of at least one (1) year, submit*:
   a.) AFS as of the last year of operation; and
   b.) Affidavit of Non-Operation certified under oath by the President and Treasurer.
2. *Where the applicant has no operation since incorporation, submit:*
   a.) Balance Sheet certified under oath by the Treasurer and President;
   b.) Affidavit of Non-Operation certified under oath by the President and Treasurer;
   c.) Certificate of Non-Registration issued by the BIR;
3. *Where the applicant corporation is (stock or nonstock) is with total assets or liabilities of less than Six Hundred Thousand Pesos (Php600,000.00), it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer.*

e.) Affidavit executed under oath by the President and Treasurer that:
1. That the dissolution is not prejudicial to the interest of the creditors; and
2. There is no opposition from any creditors from the time of publication of the notice of dissolution up to the filing of the dissolution with the Commission;

f.) Bureau of Internal Revenue (BIR) Tax Clearance Certificate;

g.) Notarized Secretary's Certificate of no pending case involving intra-corporate dispute;

h.) Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary under Section 4 hereof.

Section 4. Favorable Recommendation. – No application for dissolution of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, NSSLAs, pawnshops, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

Section 5. Withdrawal of Request for Dissolution. – Within fifteen (15) days from receipt by the Commission of the Verified Request for Dissolution, a withdrawal of the said request may be made in writing, **duly verified** by any incorporator, director,

trustee, shareholder, or member, and signed by the majority of the directors or trustees, and stockholders owning or controlling at least majority of the outstanding capital stock or majority of the members who voted for the dissolution of the corporation.

Section 6. Investigation on Withdrawal of Request for Dissolution. - Upon receipt of a Verified Withdrawal of Request for Dissolution, the Commission shall withhold action on the request for dissolution and shall, after investigation:

a. Make a pronouncement that the request for dissolution is deemed withdrawn; or

b. Direct a joint meeting of the board of directors or trustees and the stockholders or members for the purpose of ascertaining whether to proceed with dissolution; or

c. Issue such other orders as it may deem appropriate.

Section 7. Change in the Ownership, Membership, and/or Composition of the Board. – If there has been a change in the ownership, membership, and/or composition of the board of directors or trustees prior to the filing of the withdrawal of request for dissolution, sufficient documentary evidence of such change must be filed together with, and attached to the withdrawal of request for dissolution.

Section 8. Verification of Withdrawal. - The verified withdrawal of request for dissolution shall contain an affidavit duly signed by any incorporator, director, trustee, shareholder, or member, which shall allege the following attestations:

a. The allegations in the Verified Withdrawal of Request for Dissolution are true and correct based on his or her personal knowledge, or based on authentic documents;

b. The Verified Withdrawal of Request for Dissolution is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation;

c. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after reasonable opportunity for discovery;

Section 9. Approval and Issuance of Certificate. – After fifteen (15) days from receipt of the Verified Request for Dissolution, and in the absence of any withdrawal of request for dissolution within said period, the Commission shall approve the request and issue the **Certificate of Dissolution**. The dissolution shall take effect only upon the issuance by the Commission of a Certificate of Dissolution.

B. Dissolution by Shortening Corporate Term under Section 136 of the RCC- A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of the RCC.

Section 1. Documentary Requirements.- The following must be submitted to the CRMD or SEC Extension Office:

A. For amendment to shorten corporate term where the proposed expiration of the corporate term is ***one year or more than one year*** *from approval of the application for amendment under Corporate and Partnership Registration Division (CPRD) of CRMD or SEC Extension Office-*

1. Cover Sheet;
2. Notarized Directors' Certificate signed by majority of the directors or trustees and the corporate secretary, attesting that: 1.) the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock stock ***including the holders of non-voting shares/*****members** of the corporation; 2.) date and place of the stockholders' or members' meeting; and 3.) the tax identification number of the signatories which shall be place below their names;
3. Amended Articles of Incorporation;
4. Compliance Monitoring Division (CMD) Monitoring Clearance;
5. Notarized Secretary's Certificate of no pending case involving intra corporate dispute;
6. Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary.

B. For amendment to shorten corporate term where the proposed expiration of the corporate term is ***less than one year****, from approval of the application for amendment under Financial Analysis and Audit Division (FAAD) of CRMD or SEC Extension Office.-*

1. Cover Sheet;
2. Notarized Directors' Certificate signed by majority of the directors or trustees and the corporate secretary, attesting that: 1.) the dissolution by shortening of corporate term was approved by majority of the board of directors/trustees and ratified by at least 2/3 vote of the stockholders representing the outstanding capital stock stock ***including the holders of non-voting shares/*****members** of the corporation; 2.) date and place of the stockholders' or members' meeting; and 3.) the tax identification number of the signatories which shall be place below their names;
3. Amended Articles of Incorporation;
4. Audited Financial Statements (AFS) as of last fiscal year, *except:*
   a. *Where the applicant has ceased operations of at least one (1) year, submit*:
      1.) AFS as of the last year of operation; and
      2.) Affidavit of non-operation certified under oath by the President
   b. *Where the applicant has no operation since incorporation, submit:*
      1.) Balance Sheet certified under oath by the Treasurer and President;

2.) Affidavit of Non-Operation certified under oath by the President and Treasurer;
3.) Certificate of Non-Registration issued by the BIR;

c. *Where the applicant corporation is (stock or nonstock) is with total assets or liabilities of less than Six Hundred Thousand Pesos (Php600,000.00), it shall submit its Balance Sheet as of last preceding fiscal year certified under oath by the President and Treasurer;*

5. Affidavit executed under oath by the President and Treasurer that:
   a. The dissolution is not prejudicial to the interest of the creditors; and
   b. There is no opposition from any creditors from the time of publication of the notice of dissolution up to the filing of the dissolution with the Commission;
6. Bureau of Internal Revenue (BIR) Tax Clearance Certificate;
7. Publisher's Affidavit of Publication of the Notice of Meeting (once)
8. Notarized Secretary's Certificate of no pending case involving intra-corporate dispute;
9. Clearance/Favorable recommendation from other Departments of the Commission or from the appropriate regulatory agency, when necessary.

Section 2. The proposed expiration of corporate term for all applications for amendment filed under Section 136 of the RCC must contemplate a future date. No application for amendment under Section 136 of the RCC shall be accepted if the proposed expiration of corporate term had already lapsed at the time of filing of the application.

Section 3. Effectivity of Dissolution.- Upon the expiration of the shortened term, as stated in the approved amended articles of incorporation, the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation. Dissolution shall automatically take effect on the day following the last day of the corporate term stated in the amended articles of incorporation, without the need for the issuance by the Commission of a certificate of dissolution.

C. Involuntary Dissolution under Section 138 of the Revised Corporation Code and Section 6(i) of Presidential Decree 902-A.

Section 1. Grounds under Section 138 of the RCC and How Initiated. – Under Section 138 of the RCC, the Commission may ***motu proprio***, or **upon filing of a *verified complaint by any interested party***, dissolve a corporation based on the following:

a. Non-use of corporate charter as provided under Section 21 of the RCC;
b. Continuous inoperation of a corporation as provided under Section 21 of the RCC;
c. Upon receipt of a lawful court order dissolving the corporation;
d. Upon finding by final judgment that the corporation procured its incorporation through fraud; and

e. Upon finding by final judgment that the corporation:
   i. Was created for the purpose of committing, concealing or aiding the commission of securities violations, smuggling, tax evasion, money laundering or graft and corrupt practices;
   ii. Committed or aided in the commission of securities violations, smuggling, tax evasion, money laundering, or graft and corrupt practices, and its stockholders knew; and
   iii. Repeatedly and knowingly tolerated the commission of graft and corrupt practices or other fraudulent or illegal acts by its directors, trustees, officers, or employees.

However, when another agency or tribunal has been identified by law as the primary regulator, investigative or administrative body for specific cases such as smuggling, tax evasion, money laundering or graft and corrupt practices, all complaints or petitions for revocation based on the commission of acts enumerated under Section 1 (e) of item C of this Guidelines shall be endorsed to said primary regulator, investigative or administrative body, for their appropriate action.

Section 2. Grounds under Section 6(i) of Presidential Decree (PD) 902-A- In addition to the grounds provided in Section 1 hereof, revocation of certificate of registration on the grounds provided in Section 6(i) of PD 902-A likewise fall within the jurisdiction of the CRMD and SEC Extension Office:

a. Fraud in the procurement of certificate of registration;
b. Failure to file or register any of the following for a period of at least five (5) years: 1.) Financial Statements; 2.) General Information Sheet; and 3.) Stock and Transfer Book or Membership Book.

Section 3. Documentary Requirements.- For **verified complaints filed by interested parties** based on the grounds provided in Section 138 of the RCC and Section 6(i) of PD 902-A as provided in Section 1 and Section 2 hereof, the following documents must be submitted to the CRMD and SEC Extension Office:

a. Verified Complaint/Petition;
b. Certificate against Forum Shopping;
c. Secretary's Certificate authorizing the filing of the complaint, if filed by a corporation; and
d. Affidavits and other documentary evidence to support the claim.

Section 4. Applicable Rules- – The provisions on investigation proceedings and administrative actions under Part II of The 2016 Rules of Procedure of the Securities and Exchange Commission and amendments thereto, shall be applied to involuntary dissolution of corporations commenced by the Commission **motu proprio.**

On the other hand, the provisions on adjudicative actions under Part III of The 2016 Rules of Procedure of the Securities and Exchange Commission and amendments thereto, shall be applied for the involuntary dissolution of corporations filed **by any interested party through verified complaint/petition.**

Section 5. Forfeiture of Assets. – If a corporation is ordered dissolved by final judgment pursuant to the grounds set forth in subparagraph (e) of Section 1 hereof, its assets, after payment of liabilities, shall, upon petition of the Commission with the appropriate court, be forfeited in favor of the national government. Such forfeiture shall be without prejudice to the rights of innocent stockholders and employees for services rendered, and to the application of other penalty or sanction under the RCC of other laws.

Section 6. Notice to and Coordination with Other Regulatory Agencies. – The Commission shall give reasonable notice to, and coordinate with, the appropriate regulatory agency prior to the involuntary dissolution of companies under their special regulatory jurisdiction.

D. Other Provisions.

Section 1. Number of Copies. – The applicant corporation shall submit the documentary requirements provided in this Guidelines in three (3) original copies and additional one (1) copy as the applicant's receiving copy.

Section 2. The SEC Rules of Procedure and other relevant rules and regulations promulgated by the Commission shall be complied with as far as practicable.

This Memorandum Circular shall take effect immediately after its publication.

15 February 2022, Pasay City.

EMILIO B. AQUINO
Chairperson