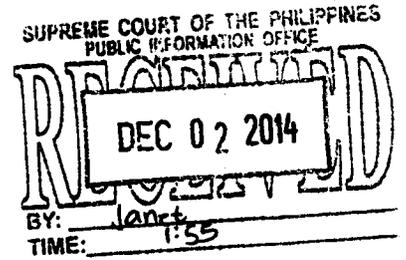




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 12 November 2014 which reads as follows:*

**G.R. No. 205291 - Company Registration and Monitoring Department and Securities and Exchange Commission, En Banc v. Ching Bee Trading Corporation.**

In this petition for review,<sup>1</sup> the Securities and Exchange Commission (SEC) seeks the review, reversal and setting aside of the October 10, 2012 Decision<sup>2</sup> and the January 14, 2013 Resolution<sup>3</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 120817. In the said rulings, the CA reversed the SEC *En Banc*'s August 4, 2011 Decision<sup>4</sup> which denied the appeal for extension of time filed by Ching Bee Trading Corporation (CBTC).

The core question presented in this case is whether CBTC is entitled to an additional time to file its amended articles of incorporation extending its corporate life despite its attempt to file it before the original term expired.

**The Facts:**

CBTC was registered with the SEC on December 23, 1960. Its corporate existence being limited to a period of only 50 years, it was to expire on December 23, 2010.

On December 22, 2010 or *one (1) day before the last day* of its corporate existence, CBTC filed with the Company Registration and Monitoring Department (CRMD) of the SEC, an application seeking the approval of its amended articles of incorporation extending its term for another 50 years. CRMD, however, refused to accept the application because of CBTC's failure to state in the required Director's Certificate that the stockholders, owning and representing at least two (2/3) of its capital stock, voted and approved the amendment. The CRMD processor in the name of Erlinda Cabatic then verbally advised CBTC to submit a letter requesting an extension to file the requirements.

<sup>1</sup> *Rollo*, pp. 8-23.

<sup>2</sup> *Id.* at 30-40. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr., concurring.

<sup>3</sup> *Id.* at 41-42. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr., concurring.

<sup>4</sup> *Id.* at 83-92.

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On December 23, 2010, or just hours before CBTC's corporate personality expired, such a letter was filed pursuant to the CRMD processor's suggestion. On January 6, 2011, however, the SEC denied the request, citing SEC Resolution No. 394,<sup>5</sup> dated November 13, 2008, as basis. The said resolution contained SEC's policy of denying the filing of any amended articles of incorporation extending the corporate life of a corporation, whose original term had expired.

On appeal to the SEC *En Banc*, the request was likewise denied. Thus, CBTC went to the CA.

In its October 10, 2012 Decision<sup>6</sup> and January 14, 2013 Resolution,<sup>7</sup> the CA ordered the SEC to admit CBTC's amended articles of incorporation. In reversing the SEC, the CA stated that CBTC should have been given reasonable time within which to correct or modify any portion in the articles following Section 17 of the Corporation Code (*Code*), which states as follows:

*Sec.17. Grounds when articles of incorporation or amendment may be rejected or disapproved.* – The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: **Provided, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment.**

[Emphasis and underscoring supplied]

Hence, this petition.

The SEC contends that the CA erred in granting CBTC's prayer for an extension to file the amended articles of incorporation. It points out that a corporation seeking to extend corporate term must take all the necessary steps before its life expires at the end of the 50-year period. As basis, it cites *Alhambra Cigar and Cigarette Manufacturing Company v. Securities and Exchange Commission*,<sup>8</sup> where the Court stated that "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,

<sup>5</sup> 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.

<sup>6</sup> *Rollo*, pp. 30-40. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr., concurring.

<sup>7</sup> *Id.* at 41-42. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr., concurring.

<sup>8</sup> 133 Phil. 229 (1968).

generally the 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."<sup>9</sup> Considering that CBTC failed to file the amended articles of incorporation and to seek the approval of the SEC before the expiration of its term on December 23, 2010, the SEC argues that no valid extension of its corporate existence could be allowed.

For its part, CBTC relies on Section 17 of the Code, interpreting the same as a statutory mandate for the SEC to give reasonable time to an applicant within which to correct or modify the objectionable portions of the proposed amendment. CBTC argued that when the CRMD found that the amended CBTC articles of incorporation was non-compliant with the form prescribed by the Code, the SEC should have given CBTC reasonable time to complete the requirements. Further, it rejects the application of *Alhambra* for not being in all fours with this case, particularly because the issue<sup>10</sup> raised therein finds no similarity in the case at bench, and also the fact that the extension requested therein was made *after* the corporate term had already expired.

### The Court's Ruling

The Court denies the petition.

The overarching rule in this jurisdiction is that a corporation ceases to exist upon the expiration of the corporate term indicated in its articles of incorporation.<sup>11</sup> Once that occurs, all corporate acts, except those conferred by law, are considered *ultra vires*, if not outright invalid. Thus, the moment a corporation's right to exist as an "artificial person" ceases, its corporate powers are terminated "just as the powers of a natural person to take part in mundane affairs cease to exist upon his death."<sup>12</sup>

Nevertheless, corporate death may be avoided as the State practically allows the unlimited perpetuation of a corporation by operation of Section 11 of the Code, to wit:

<sup>9</sup> *Alhambra Cigar and Cigarette Manufacturing Company v. Securities and Exchange Commission*, 133 Phil. 229, 234 (1968).

<sup>10</sup> There, the issue was, *may a corporation extend its life by amendment of its articles of incorporation effected during the three year statutory period for liquidation when its original term of existence had already expired.*

<sup>11</sup> *Gelano v. CA*, G.R. No. 39050, February 24, 1981, 103 SCRA 90, 97 citing Fisher, 1929 ed., p. 386.

<sup>12</sup> *Alhambra Cigar and Cigarette Manufacturing Company v. Securities and Exchange Commission*, 133 Phil. 229, 234 (1968).

**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.** <sup>13</sup>  
(Emphasis Supplied)

This privilege of extending corporate term must be done within the limited period of five (5) years prior to the original or subsequent expiry date. It is in this regard that the SEC argues that CBTC should have done it earlier, not one day before the expiration of the term, and that the failure to do so constitutes negligence with which the CBTC must bear the consequences, particularly the loss of its corporate life.<sup>14</sup>

The Court acts on the matter with liberality. The Code is silent as to how early within the five (5) year period the application for extension should be made. Reading plainly from Section 11 of the Code would reveal that an applicant may seek the approval of the SEC for the extension of its life at any time within the given five year period. Evidently, a corporation may seek extension even one day prior to the date of expiration as the law does not impose an earlier limitation.

In this case, CBTC sought to extend its corporate term by filing the required documents with the CRMD on December 22, 2010 – obviously within the period allowed and granted by the Code to seek for extension. It had a day to seek the approval of the proposed extension of the corporate existence. Unfortunately, the CRMD processor refused to receive the application on the ground that there was failure to state in the required Director's Certificate that the stockholders, owning and representing at least two (2/3) of CBTC's capital stock, voted and approved the amendment. To the SEC, the rejection was valid as it was authorized under Section 17 of the Code<sup>15</sup> if an applicant did not substantially comply with the requirements of the Code as to the form.

Under Section 17 of the Code, however, the SEC must give a reasonable time to an applicant within which to make the necessary

<sup>13</sup> The Corporation Code, Section 11.

<sup>14</sup> See Petition, *rollo*, p. 21.

<sup>15</sup> The following are the grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein; xxx

corrections should there be objectionable portions in the amendment. As cited by the CA, a reasonable time is defined as so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any to the other.<sup>16</sup> In this case, the CRMD failed to at least provide CBTC a reasonable time within which compliance with the requirements for extension may be made in full. Instead, the processor only verbally advised CBTC to submit a letter-request asking for an extension to file the deficient documentary requirements. What the SEC should have done was to give a formal notice to CBTC that the latter had one day to cure any defect before CBTC's life would expire. That one (1) day, which was lost because of miscommunication, would have been enough to complete the process of filing the application within the period specified by the Code and would have sufficed for the approval of the corporate extension being requested. Therefore, CBTC remains entitled to a day to submit all the requirements prescribed by the Code.

On this point, the SEC points out that even assuming that CBTC had at least a day to complete the requirements, such a time would not have been sufficient to extend CBTC's corporate life. It is of the position that the approval of the extension must likewise happen while CBTC is alive, albeit in fiction. Considering that CBTC had been *ipso facto* dissolved after December 23, 2010, SEC submits that no more extension could be granted.

This perspective seems to provide an expectation that a corporation seeking to extend its corporate life must secure the SEC approval anytime before the expiration of the term – meaning that the corporation must make sure that the SEC approves the amendment. While the Court agrees that extension (including the SEC approval) must happen before the expiration of the corporate term, the burden of doing so does not only fall to the applicant, but also on the SEC. The requirement pronounced in *Alhambra*,<sup>17</sup> requiring that all steps must be undertaken while life still subsists, is both the responsibility of the State, acting through the SEC, and the corporation. To say that the corporation alone has this burden is unfair as the Code does not impose this obligation solely on the corporation.

Accordingly, for as long as the corporation opts to extend its term while it is still alive and during the period allowed by the Code, that is, the filing of the necessary requirements, the burden shifts to the SEC to review, approve or disapprove the same before the corporation breathes its last. If no approval is secured within that limited time, the fault would have to be on the part of the SEC.

<sup>16</sup> Judge Alma Crispina B. Collado-Lacorte v. Eduardo Rabena, A.M. No. P-09-2665, August 4, 2009, 595 SCRA 15, 19.

<sup>17</sup> Supra note 11, at 234.

The problem here is the assertion of the SEC that nothing was even filed as the application was rightly rejected by the CRMD. Then again, the Court believes that despite that rightful rejection, CBTC was deprived of its right to a reasonable one (1)-day period to complete the requirements in view of the suggestion made by the processor to instead submit a letter requesting for extension. That suggestion caused a misunderstanding as to the proper recourse that CBTC should have taken. Had the processor notified CBTC about the urgency of fulfilling the requirements prior to the expiration of the corporate term, it would have been likely that the requirements for the filing would have been completed.

The Court takes notice of the fact that the deficiency has been remedied by the submission of the amended December 23, 2010 Director's Certificate. And with this compliance, it is but fair that CBTC be considered to have sufficiently complied in good faith with all the requirements for a valid extension, as if such was made prior to the expiration of its corporate life or, to be precise, on December 23, 2010. This ruling runs in accord with the doctrine of relation. Under the said principle, where the delay is due to the neglect of the officer with whom the certificate is required to be filed, or to a wrongful refusal on his part to receive the application,<sup>18</sup> such as in this case, the amendments shall take effect from the date the documents were filed.<sup>19</sup>

**WHEREFORE**, the petition is **DENIED**. The SEC is ordered to act on the application with dispatch.

**SO ORDERED.**

Very truly yours,

  
 MA. LOURDES C. PERFECTO  
 Division Clerk of Court *my 11/27*

<sup>18</sup> *Alhambra Cigar and Cigarette Manufacturing Company v. Securities and Exchange Commission*, supra note 11, at 234-235.

<sup>19</sup> The Corporation Code, Section 16.

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