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

**EN BANC**

**RE: AMENDMENT OF ARTICLES OF INCORPORATION OF PHILUSA CORPORATION.**

**SEC En Banc Case No. 05-10-200**

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# DECISION

Before the Commission *En Banc* is the appeal by PHILUSA Corporation (hereinafter referred to as "PHILUSA") of the denial[1] of its application for extension of corporate term.

## FACTS OF THE CASE

PHILUSA was registered[2] with this Commission on 28 October 1957 to "engage in the business of manufacturing and compounding drugs, chemicals, medicinals, veterinary compounds and other goods and wares of all kinds and description; to establish, own maintain, operate and lease laboratories, plants and other facilities for the manufacture of the aforementioned products; to buy, sell, lease or otherwise deal in all kinds of machinery, equipment, scientific apparatus and instruments, chemicals, extracts, compounds and other materials required for manufacturing operations."[3]

PHILUSA was also formed to "establish, operate, conduct and carry on the business of wholesalers and distributors, buying, selling or otherwise dealing in chemicals, drugs, pharmaceuticals, medicinal and veterinary compounds, hospital,

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1 Annex "A" of Memorandum on Appeal.
2 SEC Registration No. 13220.
3 Second Article, Amended Articles of Incorporation of PHILUSA.

medical, dental and laboratory supplies and equipment, food preparations, toilet articles and general merchandise of all kinds and description; to import and export all lawful objects of commerce and to acts as manufacturers' representative, or agent, commission merchant, commercial broker, factor, agent, upon consignment or indent orders or in any other representative capacity for natural or juridical persons and entities, whether domestic or foreign."[4]

PHILUSA avers that it applied for an extension of its corporate term sometime in June 2003. The application was allegedly sent via registered mail[5] and allegedly received[6] by the Records Division of the Commission on 18 June 2003.[7] PHILUSA wrote to Director Benito A. Cataran of the Company Registration and Monitoring Department (hereinafter referred to as "CRMD") on 02 September 2009 and shortly after, had a clarificatory conference with CRMD lawyer Atty. Alvin Cape on 16 October 2009.[8]

Allowed to proceed by the CRMD, PHILUSA paid[9] on 28 October 2009 the filing fee of one million and ten thousand pesos (P1,010,000.00).[10]

When the original records of PHILUSA were checked, it was noted that the original of the cover sheet, as well as the accompanying documents in support of the application for amendment were fastened together with other corporate records of PHILUSA inside the original records folder.[11] The CRMD then asked the Central Receiving and Records Division ("CRRD") of the Human Resource and Administrative Department (HRAD) of the Commission to confirm if, indeed, the application was officially received in 2003. The CRMD noticed that the alleged submission in 2003 did not go through the pre-processing stage.[12]

Upon checking with the CRRD, the CRRD said that the application did not show any proof of receipt by its division.[13] The CRRD suggested that the matter of

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4 Second Article, Amended Articles of Incorporation of PHILUSA.

5 Affidavit of Mailing executed on 26 July 2010 by Rocky Feller Ferrer, General Clerk assigned to the Legal Division of Mercury Group of Companies, Inc.

6 During the Clarificatory Conference held on 21 July 2010, counsel for PHILUSA submitted a photocopy of the cover sheet bearing a stamp mark with the letters "LCU" and a signature with "6-18-03" beside it. PHILUSA claimed that the photocopy of the Cover Sheet was submitted by the company messenger after he was instructed to verify if the application for amendment was indeed received by the Commission.

7 Par."A" of the Memorandum on Appeal.

8 Par."A," *Ibid.*

9 Par. 1.4, Statement of Facts, Reply Memorandum.

10 The filing fee was P1,000,000.00 while the photocopy of the receipt submitted by counsel for PHILUSA reflects P10,000.00 for the payment of fines/penalties.

11 Par. 1.4, Statement of Facts, Reply Memorandum.

12 Par. 1.6, *Ibid.*

13 Par. 1.8, *Ibid.*

verification be referred to the Corporate Filings and Records Division ("CFRD") [14] since the acknowledgment stamped on the cover sheet was from its License Control Unit ("LCU").[15] However, upon checking the LCU's records, it was discovered that the logbooks covering the periods 2000-2005 are no longer available. Thus, the CFRD cannot confirm nor deny whether such application was received.[16]

The CRMD denied the application of PHILUSA in a letter dated 16 March 2010 which was received by PHILUSA on 29 March 2010.[17]

On 05 April 2010, PHILUSA filed a letter seeking reconsideration of the denial of the application for extension of term.

In his reply dated 13 April 2010[18] Director Benito A. Cataran of the CRMD directed PHILUSA to file its request for reconsideration with the Commission *En Banc* which was received by PHILUSA on 01 May 2010. [19]

Hence, the instant Appeal.

## ISSUE

The issue to be resolved is whether or not the CRMD erred in denying PHILUSA's application for amendment of its Articles of Incorporation to extend its corporate life.

## RULING

The Appeal has no merit.

Relevant to the resolution of this case is Section 11 of the Corporation Code, to wit:

> "**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

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14 *Ibid.*
15 Par. 1.7, *Ibid.*
16 Par. 1.10, *Ibid.*
17 *Ibid.*
18 Annex "C," *Ibid.*
19 Par. 5, Memorandum on Appeal.

> 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."[20]

PHILUSA maintains that it filed its application for extension in 2003 and waited for further action from the Commission but there was none. It was only after PHILUSA wrote to CRMD Director Benito A. Cataran that the processing of its papers started.[21]

In the clarificatory conference held with the parties, CRMD clarified its position that an application is only considered filed after payment of the filing fee.[22]

PHILUSA's attempt to lay the blame at the CRMD's door cannot be sustained. As PHILUSA admits, after instructing the company messenger to verify if the application for amendment was indeed received, there was no further action on its part.[23]

Even assuming that the original application was, indeed, received in 2003, the failure to complete the pre-processing stage should not have escaped PHILUSA's vigilance. PHILUSA only took the initiative to check on the status of its application after six (6) years. PHILUSA's allegations of a heavy workload or a misconception that there was a luxury of time[24] to file the application does not constitute sufficient excuse to attend to what would have been an otherwise simple procedure and yet important to the corporation's existence.

The case of *Benguet Consolidated Mining Co. v. Pineda*[25] ratiocinated the importance of a corporation's term of existence in this wise:

> "The State and its officers also have an obvious interest in the term of life of associations, since the conferment of juridical capacity upon them during such period is a privilege that is derived from statute.... And the State is naturally interested that this privilege be enjoyed ***only under the conditions and not beyond the period that it sees fit to grant***; and particularly, that it be not abused in fraud and to the detriment of other parties; and for this reason, it has been ruled that '***the limitation (of corporate existence) to a definite period is an exercise of control in the interest of the public.***'" (emphasis supplied)[26]

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20 Corporation Code of the Philippines, Batas Pambansa Blg. 68 (1980).
21 Paragraph A, Arguments, Memorandum on Appeal.
22 Minutes of the Clarificatory Conference held on 21 July 2010.
23 *Ibid.*
24 *Ibid.*
25 98 Phil 711 (156), cited in Villaneuva, Philippine Corporate Law, p. 203 (2001).
26 Citing Smith v. Eastwood Wire Manufactoring Co., 43 Atl. 568, *Ibid.*

It is incumbent upon PHILUSA to be vigilant about matters which are vital to the corporation's existence. The law is clear and provides a straightforward procedure for extending a corporation's life. Any other interpretation of the law will be prejudicial to the interest of the public.

**WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** for lack of merit. One hundred percent (100%) of the filing fee paid shall be credited in full for future filings of the company. Let the Company Registration and Monitoring Department be furnished with a copy of this **Decision** for its appropriate action.

**SO ORDERED.**

Mandaluyong City, 12 August 2010.

**FE B. BARIN**
Chairperson

**MA. JUANITA E. CUETO**
Commissioner

**RAUL J. PALABRICA**
Commissioner

**MANUEL HUBERTO B. GAITE**
Commissioner

**ELADIO M. JALA**
Commissioner