Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills, Mandaluyong City, Metro Manila

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SEC Opinion No. 06-20
Dissolution of subsidiaries

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Sir

This refers to your letter dated 05 December 2005, requesting clarification relative to the closure of some of your subsidiaries. You disclosed in your letter that most of your subsidiaries have decided to close by applying Section 120 of the Corporation Code which provides for dissolution by shortening of corporate term.

You posed several questions, enumerated as follows:

1. If, suppose the Corporation decided to shorten its term to January of this year and is now attending to its tax clearance so that the amended Articles of Incorporation can be submitted to your Commission, does the phrase *"or the expiration of the shortened term, as the case may be"* mean that the Corporation no longer exist today, being December?

2. If it no longer exists, can the board of directors turn over the affairs to a trustee in order to save on expenses? Will this also require a separate amendment to the Articles of Incorporation?

3. Can the provisions of Sec. 121 of the Corporation Code apply to the corporations who do not have any funds to file anything and where the Commission on Audit prevents the stockholder from covering expenses?

4. Can Section 22 of the Corporation Code apply to two corporations that have never commenced its business, namely School of Technology Advancement and Research and Monterrosa Development Corporation. Can the liquidation process be undertaken with respect to these two corporations?

Anent your first question, Section 120 of the Corporation Code provides:

"SECTION 120. Dissolution by shortening corporate term. — A voluntary dissolution may be affected by amending the articles of incorporation to shorten the corporate term pursuant to the provisions of the Code. A copy of the amended articles of incorporation shall be submitted to the Securities and Exchange Commission in accordance with the Code; ***Upon approval of the amended articles of incorporation or the expiration of the shortened term, as the case may be,*** the corporation shall be deemed dissolved without any further proceedings, subject to the provisions of this Code on liquidation." (underscoring ours)

It is apparent from the abovementioned provision that it is only upon approval of the amended articles of incorporation by the SEC that the corporation shall be deemed dissolved. This means that if the shortened term, as proposed in the amendment of the articles of incorporation, expires before the approval by the SEC, the corporation will not be automatically dissolved upon such expiration but only upon SEC approval of the amendment. On the other hand, if the SEC gives its approval before such shortened term expires, the dissolution can take effect only upon the expiration of such shortened term.[1]

The pertinent provision to answer your second question is quoted hereunder:

"SECTION 122. Corporate Liquidation. — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, *xxx*.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders members, creditors, and other persons in interest. xxx." (emphasis supplied)

The usual procedure of liquidation is by the corporation itself through its board of directors. Thus, our Supreme Court has held that "the normal

[1] Campos, The Corporation Code, Vol. II p. 369 [1990]

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method of procedure is for the creditors and executive officers to have charge of the winding up operation, *though there is the alternative method of assigning the property of the corporation to trustees for the benefit of its creditors and shareholders.*"[2]

Hence, the board of directors can turn over the winding up affairs of the corporation to a trustee.

As for your third question, Section 121 of the Corporation Code applies to involuntary dissolution wherein "a corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations." Said section illustrates how involuntary dissolution may be effected.

We would like to point out that, with respect to your fourth question, verification with the Company Registration and Monitoring Department (CRMD) shows that both School of Technology Advancement and Research Inc. and Monterrosa Development Corporation have engaged in business operations and are still actively operating. Attached is a copy of the document index list issued by the CRMD.

Section 22 of the Corporation Code provides for the effects of non-use of corporate charter and continuous inoperation of a corporation. This section is clearly not applicable to both the School of Technology Advancement and Research Inc. and Monterrosa Development Corporation.

Please be advised accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[2] SEC letter to Mr. Julio H. Agcaoili, October 10, 1990 [citing Agbayani, Commercial Laws of the Philippines, citing China Banking Corp. vs. Michelin & Cie, G.R. No. 36930, June 30, 1933]

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