PHILWOOD (CEBU), INC.,
Appellant

SEC En Banc Case No. 08-14-339A
For: Application for Extension of Corporate Term

-versus-

ATTY. LINDEZA ROGERO-GAVINO, in her capacity as Director of SEC-Cebu Extension Office,
Appellee.

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DECISION

For consideration of the Commission *En Banc* is the *Memorandum of Appeal*, dated 11 August 2014, filed by Philwood (Cebu), Inc. ("***Appellant***" for brevity) assailing the 24 July 2014 Order[1] ("***Assailed Order***" for brevity) of Atty. Lindeza Rogero-Gavino, Director of Cebu Extension Office ("***Appellee***" for brevity), which denied Appellant's application for extension of corporate term.

Appellant is a duly organized corporation existing under Philippine laws with SEC Registration No. 25403 with principal office at 505 C. Padilla St., Cebu City. Appellee, on the other hand, is the Director of the SEC Cebu Extension Office. [2]

On 22 May 2014, Resolution No. 12-04, which embodies the extension of its term for another fifty (50) years from date of expiration on 3 July 2014,[3] and Resolution No. 08-04, which involves the reduction of the number of its directors from seven (7) to five (5),[4] were unanimously approved by its Board of Directors. Subsequently, said resolutions were approved by its Stockholders, representing two-thirds (2/3) of the outstanding capital stock, on 11 June 2014.[5]

Appellant claims that on 24 June 2014, it submitted the requirements for the amendment of its Articles of Incorporation (AoI) extending its corporate life for another fifty (50) years and reducing its Board of Directors to five (5), but was refused

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[1] 11 August 2014 Memorandum of Appeal, Annex "**A**" (Annex "**5**" of the Reply)
[2] Ibid, pp. 3-4.
[3] Ibid, Annex "**C**".
[4] Ibid, Annex "**E**".
[5] Ibid, Annexes "**D**" and "**F**".

acceptance and was required to pay the accumulated fines and surcharges for failing to submit its General Information Sheet for several years amounting to P72,450.00. Thereafter, it resubmitted its requirements for the amendments of its AoI on 10 July 2014.

On 24 July 2014, Appellee issued the Assailed Order denying Appellant's application for extension of its corporate life on the ground that its original term of existence had already expired on 03 July 2014.[6]

Hence, this Appeal.

The central issue to be resolved in this case is whether or not Appellant's application for extension of corporate term should be given due course.

Appellant, in its *Memorandum of Appeal,* maintains that it complied with the requirements of the law. It argues that the payment of fines is not one of the requirements in amending the Articles of Incorporation under Section 16[7] of the Corporation Code. It also contends that the receiving unit of the Cebu Extension Office has no discretion to refuse the documents of Appellant for the amendment of its AoI. In other words, the duty to receive applications for amendment of the AoI is ministerial.

On the other hand, Appellee, in her *Reply*, dated 08 September 2014, counters that the denial of Appellant's application for corporate extension is valid and legal since the refusal to accept Appellant's application on 24 June 2014 was based on the fact that it failed to present all the documents required for the amendment of its AoI. In fact, up to the time of filing of the present Memorandum on Appeal, Appellant did not submit the Director's Certificate as what was submitted was the Minutes of the Special Meeting of the Board of Directors, which was signed only by its Corporate Secretary and attested to by its President. And, pursuant to SEC Resolution No. 394, Series of 2008,[8] Appellee rightfully returned Appellant's resubmitted documents for having been filed after the cessation of its corporate life on 03 July 2014.

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[6] Supra, Note 1.

[7] Section 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

[8] 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.

We resolve to grant the present Appeal.

The privilege of extension is purely statutory; hence, all the steps or conditions necessary to effect the extension must be taken or complied with, 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.[9]

In the case of ***Company Registration and Monitoring Department and Securities and Exchange Commission, En Banc vs. Ching Bee Trading Corporation,***[10] the Supreme Court explained that the responsibility of complying with the conditions necessary to extend corporate term falls upon the State, through the Commission, and the corporation. It also emphasized the duty of the Commission to afford the applicant-corporation reasonable time within which to make the necessary corrections should there be objectionable portions in the amendment as provided under Section 17[11] of the Corporation Code by giving a formal notice thereof to the applicant-corporation. Thus:

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

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[9] Alhambra Cigar & Cigarette Manufacturing Company, Inc. vs. Securities and Exchange Commission, G.R. No. L-23606, July 29, 1968.

[10] G.R. No. 205291, 12 November 2014.

[11] Section 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. xxx

(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*, 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."[12]

Needless to say, the Commission has the power to promulgate rules and regulations reasonable necessary to enable it to perform its duties under the Corporation Code.[13] The following are the basic requirements imposed by the Commission for the amendment of AoI:

"1. Amended Articles of Incorporation

2. Directors` or Trustees` Certificate - notarized and signed by majority of the directors or trustees and the corporate secretary, certifying (i) the amendment of the Articles of Incorporation and indicating the amended provisions, (ii) the vote of the directors or trustees and stockholders or members, (iii) the date and place of the stockholders` or members` meeting; and (iv) the tax identification number of the signatories which shall be placed below their names

3. Notarized Secretary`s Certificate on no pending case of intra-corporate dispute

4. Compliance Monitoring Division (CMD) Clearance..."[14]

An examination of the documents submitted by Appellant would reveal that it is not compliant with the aforesaid requirements. It failed to submit the Directors Certificate and the Compliance Monitoring Division Clearance; hence, the refusal to accept its application to amend its AoI was proper. However, Appellant should have been given a formal notice of the deficiencies in its application and the time within which to complete its requirements by the SEC Cebu Extension Office in compliance with its duty under Section 17[15] of the Corporation Code. It must be pointed out that seven (7) working days (from June 24 to July 3, 2014) would have been sufficient enough for Appellant to complete the requirements had it been formally informed of the

[12] Emphasis and underscoring supplied.

[13] Section 143, Corporation Code of the Philippines. Rule-making power of the Securities and Exchange Commission. - The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers.

[14] http://www.sec.gov.ph/services-2/company-2/amendment/ <last accessed: 10 August 2016>

[15] Supra, Note 11.

deficiencies and the time within which to correct the objectionable portions of its application. Furthermore, the intention to extend Appellant's corporate term is apparent in the Minutes of the Special Meeting of the Board of Directors and of the Stockholders, which were held on 22 May 2014 and 11 June 2014, respectively.[16]

WHEREFORE, premises considered, the *Memorandum of Appeal* is **GRANTED**. Appellant is given ten (10) days from receipt of this Decision to complete its requirements for the amendments of its Articles of Incorporation extending its corporate term for another fifty (50) years from 03 July 2014 and reducing its directors from seven (7) to five (5).

The SEC Cebu Extension Office is hereby **DIRECTED** to act on the application with dispatch upon the submission of Philwood (Cebu), Inc. of all the requirements necessary for the amendments of its Articles of Incorporation.

SO ORDERED.

Pasay City, Philippines, 01 September 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

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[16] 11 August 2014 Memorandum of Appeal, Annexes "**C**" and "**D**".